

Anti-money laundering and counter-terrorist financing measures

San Marino

Fifth Round Mutual Evaluation Report

April 2021



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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.

The fifth round mutual evaluation report on San Marino was adopted by the MONEYVAL Committee at its 61st Plenary Session (Strasbourg, 26 – 30 April 2021).

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EXECUTIVE SUMMARY

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

Key Findings

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

ML is both prioritised and effective. The types of ML activity investigated and prosecuted are consistent with San Marino's threats and risk profile and AML policies. The investigation and prosecution of ML is adequately resourced by the number of Investigating Judges, judicial police and clerks. Such cases are managed effectively and often a ML conviction is achieved in San Marino before the trial of the predicate offence in foreign jurisdictions. The sentences available for legal persons are not sufficient or persuasive. Where natural persons are convicted of ML, sentences are passed which (if served) would be considered to be effective, proportionate and dissuasive. There are however difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them. If custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime.

- 4) San Marino has a comprehensive legal framework on seizures and confiscation. It provides adequate tools for the detection, restraint and confiscation of the instrumentalities and proceeds of crime, both for domestic and international criminal cases. The confiscation of criminal proceeds is pursued as a policy objective although some improvements in the field of asset management could be envisaged. The courts routinely order the confiscation of assets previously seized over the course of a criminal investigation. There have been cases of non-conviction-based confiscations. San Marino requests the repatriation of assets seized abroad. No request to recognise a confiscation judgment from abroad has been received during the period under review. The number of controls regarding the cross-border movements of cash is relatively high and seems to be adapted to the country's current situation. The authorities in charge of the detection of cash could however benefit from additional investigative means. The confiscation results do generally reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities.
- 5) San Marino's legal framework to fight TF is broadly in line with the international standards. There have been no prosecutions for TF in San Marino. The other initiatives by the Sammarinese authorities, category encompassing a few TF investigations, appear to correspond to the country's TF risk profile. San Marino has the tools to identify and investigate cases of TF. Although there is a low number of investigations for TF, the AT did not come across any fundamental problems regarding the identification and investigation of actual or potential TF offenses. Other initiatives taken by San Marino in the field of CFT show a reasonable degree of commitment and awareness by the competent authorities. The actions undertaken by San Marino are supported by the national counter-terrorism (CT) Strategy. San Marino authorities generally demonstrated a good understanding of TF risks. The TF analysis performed in the NRA is rather exhaustive and explains well the different actions undertaken by San Marino and how the conclusions were reached.
- 6) San Marino legislation ensures immediate implementation of targeted financial sanctions (TFS) related to TF and proliferation financing (PF) through decisions of the Congress of State (Government of San Marino). Updates to the lists are in effect immediately when received by the Ministry of Foreign and Political Affairs (MFA) and FIA from the respective UN Commissions. Understanding of TFS related obligations varies between the private sector representatives. Apart from banks, FIs forming part of a group and accountants/auditors, there is no clear understanding among obliged entities (OEs) on their freezing obligations. Smaller FIs and most of the DNFBPs do not have sufficient understanding of the freezing obligations apart from STR reporting. In addition, there was a misunderstanding among the OEs that freezing obligations would extend to funds only,

thus not covering other assets. The FIA and Office for Control Activities (OCA) have identified the subset of NPOs falling under the definition of FATF and applied risk-based monitoring towards these entities. Nonetheless, the NPOs met on-site lacked knowledge of their TFS related obligations and ways in which they might be potentially be misused for TF.

- 7) San Marino applies TFS to persons designated by the United Nations (UN) pursuant to United Nations Security Council Resolutions (UNSCRs) 1718 and 1737. The implementation of TFS on PF and supervision of compliance with obligations arising from thereof follows a similar process as for TFS on TF. The OEs' understanding of their freezing obligations (apart from STR reporting) is limited throughout all the sectors (apart from banks) and there is a misunderstanding among the OEs of the scope of assets and persons towards which freezing obligations would apply.
- 8) The knowledge, understanding and appreciation of the significance of ML/TF risks significantly varies amongst those within the private sector. Whilst those financial institutions (FIs) which are part of a group with the San Marino banks demonstrated good level of understanding of the ML/TF risks this level of understanding was not shared by the rest of the FIs and the DNFBP sector. Smaller FIs were aware of the NRA results, but could not elaborate on the practical risks their sector could be exposed to. Appropriate self-assessment of ML/TF risks is conducted by most of the OEs, however some sectors appear to limit their understanding to the customer risk classification and scoring systems/tools available for assessing certain risk factors only. The DNFBPs demonstrated a lower level of understanding, except for the accountants and auditors, which appear to have an adequate level of understanding of their risks and ways of being misused, as well as their respective obligations. Most of the sector representatives lack full appreciation of their exposure to ML risks.
- 9) Banks and other FIs demonstrated a good knowledge of the applicable requirements in AML/CFT Law¹ and relevant regulations, including those related to customer due diligence (CDD) and record keeping. Nevertheless, there are concerns about most of the smaller FIs' and most of the DNFBPs' ability to properly identify and verify beneficial ownership information based on both their knowledge and accuracy of the sources used. The vast majority of DNFBPs have a basic understanding of CDD measures. FIs and DNFBPs have in general a good understanding of the STRs' legal requirements and of tipping off measures. Most of the STRs are filed by the banking sector, while the level of reporting by some sectors does not seem to be commensurate with the risks they face.
- 10) Registration and licensing of FIs and professional trustees (PTs) is conducted by the CBSM. The CBSM performs fit and proper checks of shareholders, beneficial owners (BOs) and the senior management before granting entry into the market and also conducts ongoing assessment of fit and proper requirements. Even though for FIs and PTs the CBSM is required to assess adverse media, origin of funds and their transparency, potential association with criminals is not always considered to be a stand-alone ground to decline market entry. For DNFBPs a two-pillar market entry control upon registration of companies is performed by lawyers/notaries and the OEA. During the establishment of companies in general, lawyers/notaries perform CDD measures and collect relevant

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

documentation. The OEA performs controls during the establishment of companies and for natural persons in the context of issuing licenses for economic activity. No measures are taken to prevent associates of criminals from owning, controlling or managing DNFBPs, nor there are any ongoing checks on the firm and proper requirements by the OEA.

- 11) The FIA, as AML/CFT supervisor for all FIs and DNFBPs in San Marino, has a good risk understanding of each of the sectors under its supervision. The FIA applies a risk-based approach (RBA) to AML/CFT supervision with offsite and on-site inspections. As for the on-site supervision of OEs, the FIA gives preference to thematic on-site inspections in relation to the higher risk areas/products identified in the NRA. In general, the number of on-site inspections for higher risk DNFBPs is low. Over-reliance of FIA on thematic inspections for higher risk FIs allows FIA to inspect these entities more frequently, still this is not in line with what is expected from an effective risk-based AML/CFT supervision. This is the case, as the FIA's human resources for conducting supervisory activities are not commensurate with the supervisory workload. The FIA has a range of sanctions available for breaches of AML/CFT obligations but the overall level of fines available and issued are relatively low. The CBSM is a prudential supervisor and is only responsible for performing licensing and market entry controls for FIs and PTs.
- 12) Information on the creation, types and features of legal persons and legal arrangements that may be established under Sammarinese law is publicly available. Processes for the creation of those legal persons, as well as for obtaining and recording basic ownership information are described in the legislation and on the public websites. San Marino has not conducted a comprehensive and systematic identification and assessment of ML/TF risks associated with all types of legal persons created in the country. Nevertheless, the authorities showed an adequate understanding of the risks.
- 13) San Marino established Registers of Beneficial Owners of Legal Persons and Trusts. The authorities have timely access to basic and beneficial ownership information of legal persons and legal arrangements. The information is adequate, as it contains sufficient and valuable data on BOs. However, concerns remain whether the relevant data is accurate and up to date for all types of legal persons and arrangements.
- 14) San Marino has a sound legal framework for MLA and other forms of international cooperation. San Marino demonstrated effective cooperation in providing and seeking international cooperation, using both formal and informal channels.

Risks and General Situation

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

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

(2015-2019) the proceeds of crime generated by foreign predicate offences constituted over 90% of all ML convictions in San Marino.

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

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

Overall Level of Compliance and Effectiveness

5. Since the adoption of the 4th round MER of San Marino in 2011 there have been a number of legislative developments, including and not limited to the following: the criminalisation of self-laundering and introducing the criminal liability for legal persons which applies to all ML predicates. San Marino ratified additional international instruments (e.g. conventions on the suppression of terrorist acts) and transposed into the legal order a number of related offences. The definition of a politically exposed person (PEP) was brought in line with the FATF standards.

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

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

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

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

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

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

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

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

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

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

14. San Marino’s legal system provides adequate tools to the competent authorities for the detection, seizure and confiscation of instrumentalities and proceeds of crime, both in domestic and international cases. The confiscation of criminal assets appears to be pursued as a policy objective which is supported by a comprehensive legal framework and the methodology followed by the competent authorities in identifying assets. The Sammarinese courts routinely order the confiscation of assets previously seized over the course of a criminal investigation. A judicial debate exists in the jurisdiction as regards the confiscation “by equivalent value”, some recent decisions from the Court of Appeal having considerably reduced the amounts confiscated by the first instance judge. The repatriation of assets seized abroad is routinely requested. The confiscation results, including amounts confiscated, reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities. Some improvements are still possible, such as for

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

instance in relation to the management of seized and confiscated assets. As regards cross-border transactions of currency, the AT notes that the controls by the competent authorities are frequent, but the number of sanctions applied does not allow for a final opinion on the effectiveness and dissuasiveness of the system.

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

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

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

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

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

19. A dedicated survey on the NPO sector, its vulnerabilities and TF related risks was conducted by the FIA together with the OCA. Based on the results of the analysis of the data, the country has identified the sub-set of NPOs which may be vulnerable to TF abuse. The assessment concluded that the TF risks associated with NPOs is considered “low”, which is in line with overall risk assessment of TF at country level. Based on the outcomes of the survey a risk-based approach

towards these NPOs has been implemented. Nonetheless, the NPOs met on-site lacked knowledge on their respective TFS related obligations and risks.

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

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

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

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

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

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

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

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

26. Core Principle institutions, other FIs, money or value transfer services (MVTs) are required to be authorised by the CBSM to provide financial services in San Marino. For all these authorised entities, the CBSM verifies fit and proper requirements. The CBSM performs fit and proper checks of shareholders, BOs and the senior management before granting entry into the market and performs ongoing assessment of fit and proper requirements. When checking the good repute of the owners of substantial holdings in FIs, the CBSM verifies the provision of criminal record certificates, information on any pending charges, and confirmation on the lack of administrative penalties for actions taken as a corporate officer in the last 5 years. The applicant must provide self-declarations of their good repute and sound and proper management, that have been authenticated by a public notary. In the case of applications for new establishment or for acquisition of qualifying holdings, as part of sound and prudential management checks, the CBSM establishes the source of funds together with the transparency of the jurisdiction where the applicant resides. With respect to BOs of an applicant, the CBSM carries out checks regarding the source of wealth of the ultimate BO. Moreover, in relation to sound and prudent management checks, the CBSM carries out both in-depth reviews of the business plan submitted by the applicants and analyses the viability of the applicant's business model. Adverse media is checked during market entry by CBSM, if any negative information is found, further controls are applied. While determination of association with criminals could be performed by the sound and prudential management assessment and adverse media checks, legislation and internal documents do not prescribe *expressis verbis* a standalone requirement to determine association with criminals and to refuse market entry based thereon.

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

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

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

the FIA may have only a limited knowledge on the level of compliance with the AML/CFT obligations of higher risk sectors and in particular of specific entities.

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

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

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

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

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

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

35. San Marino has taken several measures to prevent the misuse of legal persons and legal arrangements, amongst which are the establishment of Registries of Beneficial Owners of Legal

Persons and Trusts, the prohibition of bearer shares and the establishment of a Register of Fiduciary Shareholdings, which goes beyond what is required by the FATF standards.

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

37. The low amount of administrative fines for violating the CDD obligations in relation to beneficial ownership and the low amount of administrative fines for failure to comply with the obligations to communicate beneficial ownership information to the Register of Beneficial Owners of Companies do not represent proportionate and dissuasive sanctions. Consequently, the regime of administrative fines does not represent an effective deterrent.

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

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

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

Priority Actions

- 1) San Marino should ensure additional allocation of human resources to the FIA to conduct its mandate more effectively regarding analytical work and supervisory activities.
- 2) The FIA should enhance its work on strategic analysis of ML specific trends, patterns and of complex ML schemes where San Marino might be used as one of the several jurisdictions to ML bearing in mind the characteristics and features of a regional financial centre and provide awareness training to competent authorities.
- 3) The FIA should increase their supervisory activities for OEs identified as having a higher risk to ML/TF as well as the number and range of on-site inspections to include general on-site inspections in FIs with higher risk taking a RBA.
- 4) San Marino should establish and apply a criminal justice policy on investigating and prosecuting ML which addresses the following risks: the ML of the widest range of foreign predicates; San Marino being used, or at risk of being used, in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions. Proactive parallel ML investigations should also be actively promoted and conducted as a policy objective. A solution should be found for the lack of prison capacity.
- 5) San Marino's authorities should take appropriate measures to increase risk

understanding of all FIs and DNFBPs, in particular distinct risks facing each sector and relevant mitigating measures to be taken, including by providing further guidance, training and feedback from the supervisors. In addition, authorities should ensure that all categories of the private sector conduct regular assessments of their business specific ML/TF risks for customers, products and services which are not only limited to customer risk classification. These assessments should be commensurate with the type and size of the business and the findings of the NRA.

- 6) The competent authorities should work more closely with smaller FIs and DNFBPs, to strengthen their understanding and controls in relation to CDD (particularly with regard to identification of BOs) and ECDD for PEPs and TFS for TF and PF. For TFS authorities should provide outreach to all OEs focusing on the scope of persons and assets towards which TFS should be applied. In relation to STR reporting, FIA should provide guidance to the sectors where reporting appears not to be commensurate with the risks they are exposed.
- 7) San Marino should enhance market entry controls to prevent criminals and their associates from potentially holding or being the beneficial owner (BO) of a significant or controlling interest or holding a management function in DNFBPs and VASPs. For FIs, San Marino should clarify the internal procedures of the CBSM in relation to checking association with criminals.
- 8) San Marino should enhance remedial activities and sanctions available to the FIA. In particular, SM authorities should: i) increase the sum of pecuniary penalties to a level that is proportionate and dissuasive, ii) extend remedial measures to include permanent bans on managers or other persons and revoking authorizations fully or partially, and iii) provide the FIA with the power to stop or demand certain activities immediately upon penalty payments and in addition to (rather than instead of) other types of measures or sanctions.
- 9) San Marino should take measures to ensure better access to the basic information of trusts and to ensure that BO information held for all types of legal persons and arrangements is accurate and up to date.
- 10) San Marino should further enhance the awareness of the NPO sector, including through outreach and/ or guidance to the NPOs and the donor community, with a focus on possible risks of being misused for TF and their respective obligations in this regard.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings⁴

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

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

Technical Compliance Ratings⁵

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

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

MUTUAL EVALUATION REPORT

Preface

1. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 28.09 – 9.10.2020.

3. The evaluation was conducted by an assessment team consisting of:

- Mr Stefan Wieser – Senior AML/CFT Policy Advisor, Federal Ministry of Finance, Austria (financial expert)
- Mr Mark Benson - Senior Prosecuting Advocate (Economic Crime), Attorney General's Chambers of the Isle of Man (legal expert)
- Mr Olivier Lenert – Deputy State Prosecutor, National Member for Luxemburg, Eurojust, (legal expert)
- Ms Ilze Znotina – Head of the Financial Intelligence Unit, Latvia (law enforcement expert)
- Ms Liisi Mets – Legal Advisor, Financial Supervisory Authority, Estonia (financial expert)
- Ms Ani Goyunyan – Head of International Relations Division, Financial Monitoring Centre, Central Bank, Armenia (financial expert)

The assessment team was supported by the MONEYVAL Secretariat:

- Ms Veronika Mets, Administrator
- Mr Dmitry Kostin, Administrator
- Ms Laura Kravale, Administrator

4. The report was reviewed by the Secretariats of FATF and Eurasian Group on Combating Money Laundering and Financing of Terrorism and Mr George Pearmain, Director of Financial Crime Strategy, Government of Jersey, Office of the Chief Executive, Financial Services and Digital Economy.

5. San Marino previously underwent a MONEYVAL Mutual Evaluation in 2011, conducted according to the 2004 FATF Methodology. The 2011 evaluation and the country's 2015 follow-up report have been published and are available at https://www.coe.int/en/web/moneyval/jurisdictions/san_marino.

6. That Mutual Evaluation concluded that the country was compliant with 4 Recommendations; largely compliant with 30; partially compliant with 15. San Marino was rated compliant or largely compliant with 10 of the 16 Core and Key Recommendations.

7. San Marino was placed under the regular follow-up process after the adoption of its 4th Round Mutual Evaluation Report (MER) and was removed from the regular follow-up process in April 2015.

1. ML/TF RISKS AND CONTEXT

8. Located in Southern Europe, the Republic of San Marino is an enclave in central Italy overlooking the Adriatic Sea, with a territory of 61 km². San Marino consists of one small city and smaller settlements clustered around Mount Titano, one of the peaks of the Apennine mountain range. San Marino has the smallest population of all the members of the Council of Europe about 34 590 inhabitants (in 2019⁶).

9. San Marino is not an EU Member State, though it is allowed to use the euros as its official currency according to an agreement with the European Union. The nominal Gross Domestic Product (GDP) of San Marino in 2016⁷ was €1 327 billion with an annual growth rate almost 2.5% (on real GDP). In 2017⁸ the nominal GDP was approximately €1 353 billion with an annual growth rate 0.6%. The nominal GDP of 2018⁹ is approximately €1 402 billion.

10. San Marino's constitution provides for a parliamentary style of government. The Great and General Council, composed of 60 Parliamentarians, is the legislative body and is elected every 5 years by universal suffrage. The Great and General Council exercises the legislative power and provides direction and control over Government policy. The legislative power means the adoption of Laws, which are binding on the entire community. The Parliament is headed by two Captains-Regents, who are elected by the Council every 6 months and act as heads of State for that period. The Congress of State (Government of San Marino) is elected by the Great and General Council and exercises executive power.

11. The Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Law No. 59 of 8 July 1974 and subsequent amendments) is the main law establishing the institutional framework of the jurisdiction. It guarantees the fundamental civil, political and social rights and is considered a Constitution. International treaties and conventions come first in the hierarchy of legal norms, followed by Constitutional laws, qualified and ordinary laws, decrees and the Congress of State Decisions.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

ML risk

12. In the 2010 Financial Sector Assessment Programme report¹⁰ the IMF considered San Marino an offshore financial centre due to the features of its financial sector and a high level of banking secrecy common to many offshore financial centres. In the 2016 report¹¹ the IMF highlighted that for many years the Sammarinese banking sector benefited from San Marino's tax haven and secrecy status. Due to its status in 2009 the Organisation for Economic Co-operation and Development (OECD) added San Marino to its "grey list" of tax havens. Italy also added San Marino in 2010 to its

⁶ <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00001&plugin=1>

⁷

https://www.imf.org/external/pubs/ft/weo/2019/02/weodata/weorept.aspx?pr.x=57&pr.y=16&sy=2016&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=135&s=NGDP_RPCH%2CNGDPDPC%2CPPPGRDP%2CNGDPDPC%2CPPPGRDP%2CPCPI&grp=0&a=#cs1

⁸ <https://www.imf.org/en/Publications/CR/Issues/2019/03/25/Republic-of-San-Marino-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-46705>

⁹ <https://www.statistica.sm/on-line/home/national-summary-data-page.html>

¹⁰ <https://www.imf.org/external/pubs/ft/scr/2010/cr10317.pdf>

¹¹ <https://www.imf.org/~media/Websites/IMF/Imported/external/pubs/ft/scr/2016/cr16112pdf.ashx>

“blacklist”¹². All these measures, together with the consequences of the 2008 economic crisis, led to a massive decrease in assets (from 11.3 bn (2008) to 4.6 bn (2018) – a reduction of 60%) and direct deposits (from 9.1 bn (2008) to 3.9 bn (2018) – a reduction by 56%) in the Sammarinese banking system. Following its placement on these lists, San Marino concluded a number of bilateral and multilateral cooperation agreements on tax matters to increase transparency and the exchange of information. As a result of these steps taken to enhance transparency and anti-tax evasion measures, the OECD and Italy have de-listed San Marino from their tax haven lists in 2009¹³ and 2017 respectively.

13. Nowadays, San Marino is not an offshore financial centre anymore, nevertheless it has some characteristics and features of a regional financial centre. In 2018 the total number¹⁴ of depositors was 59,639, out of which non-residents (mainly Italians) are 10,998 (18% of all depositors). The total deposits in 2020 amounted to €3,5 billion, out of which the non-resident deposits amounted to €548 million (15,5 % of the overall deposits at banking sector). In 2018¹⁵ the total loans amounted to €2,8 billion, out of which non-resident loans amounted to €1,3 billion (which makes it 47% of the overall loans). As was explained by San Marino the high amount of loans granted to non-resident customers is partly explained and originates from past features of the financial system when the San Marino banks benefited from large amounts of deposits, mostly from Italy, and looked for alternative forms of investments of their liquidity - different from the historical one of investment in financial instruments - especially abroad considering the small size of the San Marino economic system. The expansion of loans took place in a situation in which the banks had not developed efficient processes of loan management. This led the system to take high credit risks, also in terms of concentration (first of all the exposure of the main bank of the system to the Italian “Delta Group”, in liquidation since 2009) and in the absence of adequate guarantees. Over time, bank deposits have decreased, especially those of non-residents, also as a result of the various Italian fiscal amnesties and voluntary disclosures.

14. San Marino completed its second NRA in 2019 (approved in July 2020 by Congress of State). As noted in the 2019 NRA since 2015 there has been a general reduction of ML vulnerabilities and a consequent reduction of exposure to ML risk. The level of ML risk varies from “medium” to “medium-high” depending on whether the proceeds had derived from domestic or foreign crimes.

15. The proceeds of crimes committed in San Marino derive mainly from swindling/fraud (including tax evasion, unfaithful declarations due to false invoices, the use and issuing of false invoices, tax fraud), misappropriation and corruption (including the abuse of power). The criminal proceeds derived from predicate offences committed domestically are mainly deposited at FIs and reinvested in financial instruments and/or used for personal needs.

16. The proceeds of crimes committed abroad and laundered in San Marino derive mainly from swindling/fraud (including tax evasion), misappropriation, (fraudulent) bankruptcy and the “ancillary” offence of criminal association (criminal conspiracy and a mafia-type criminal association). When the predicate offences are committed abroad, the proceeds of crime are transferred to San Marino for concealment and onward transfer abroad without integration (i.e. re-investing) into the national economy (placement and layering).

17. According to the analysis in 2019 the sectors most exposed to ML risk are the banking sector (medium-high exposure to ML risk) followed by the insurance sector, the financial fiduciary

¹² <https://www.imf.org/en/Publications/CR/Issues/2017/04/06/Republic-of-San-Marino-2017-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-44803>

¹³ On 23 September 2009, San Marino exited from the OECD grey list following the signature of 12 Memorandum of Understandings.

¹⁴ Section 2.1.1 “Banking Sector” of the 2019 NRA, p.45.

¹⁵ Section 2.1.1 “Banking Sector” of the 2019 NRA, p.45.

company sector, DPMS, providers of services related to games, accountants and lawyers/notaries (medium exposure to ML risk).

TF risk

18. The overall TF risk in San Marino was assessed as low in 2019 NRA. This is based on a thorough analysis of TF threats and vulnerabilities (see these sections below). There are no active terrorist groups or individual terrorists operating in San Marino.

ML threat

19. San Marino faces internal and external ML threats depending upon where the proceeds of crime derive from. The level of ML threats posed by domestic crime is medium-low and the level of external ML threats is medium-high. As noted in the NRA during the analysed period (2015-2019) the proceeds of crime generated by foreign predicate offences constituted over 90% of all ML convictions in San Marino.

20. Pursuant to the 2019 NRA San Marino considers that swindling/fraud and misappropriation have a high level of ML threat; fraudulent bankruptcy, criminal conspiracy / mafia-type criminal association and corruption (including abuse of power)/embezzlement by public officials have a medium-high level of ML threat. In order to establish the specific level of ML threat posed by predicate offences San Marino assessed the amount of proceeds generated by these crimes. As noted in the NRA, 18 ML cases where the funds laundered totalled €29,8 million (on average €1,7 million per case) derived from swindling predicates. 17 ML cases where the funds laundered totalled €35 million (on average €2.06 million per case) derived from misappropriation offences. Those offences that have a medium-high level of ML threat are fraudulent bankruptcy, criminal conspiracy / mafia-type criminal association and corruption: 12 ML cases where the funds laundered totalled €29,4 million (on average €2,45 million per case) came from fraudulent bankruptcy type predicates; €11 ML cases totalling €15,5 million (on average €1,4 million per case) derived from criminal conspiracy / mafia-type criminal association predicates; 7 ML cases where the funds laundered totalled €45,4 million (on average €6,49 million per case) derived from corruption type predicates. As was explained by the Sammarinese authorities, to determine the level of ML threat not only the amount of proceeds generated was considered, but also other factors or circumstances, e.g. frequency of ML cases and MLA, proceeds seized and confiscated.

TF threat

21. San Marino considers the overall level of TF threat as low. In the NRA San Marino analysed many factors in order to better understand the TF threats in the country. In particular, San Marino took into account the results of the analysis of domestic, regional and international TF threats, TF STRs, cross-cutting crimes, MLA in relation to TF, the assessed effectiveness of preventative measures, and drilled down to analyse the flow of funds coming in and out of San Marino compared with the trade base information available.

ML vulnerabilities

22. San Marino determines the level of ML vulnerabilities as medium. In order to identify and assess the ML vulnerabilities San Marino in the course of the NRA exercise analysed national ML vulnerabilities comprising the national ML combating ability and overall sectorial ML vulnerabilities.

23. The national ML combating ability aims at assessing the policies, activities and results achieved by domestic AML/CFT competent authorities in order to prevent and contrast ML as well as other relevant contextual and structural elements. As a result of this work San Marino identified that the main weaknesses are related to the quality of cross-border cash controls.

24. The overall sectorial ML vulnerabilities work considers the vulnerabilities of the FI and DNFBP sectors. The results of this work determined that there are no sectors having high or medium-high level of vulnerabilities. At the same time the NRA highlights that several FI and DNFBP sectors are

affected by a medium level of vulnerabilities. In particular, the banking and insurance sectors were affected by a medium level of vulnerabilities while other FIs sectors are affected by medium-low level of vulnerability.

25. As for the DNFBP sectors affected by a medium level of vulnerability are the following: lawyers and notaries, accountants, auditors and audit firms, real estate agents (REAs), the gaming house, DPMS, auction houses, art galleries and traders in antiques.

TF vulnerabilities

26. Although the TF risk is low in San Marino the authorities still pay great attention to this issue. In particular in order to identify and assess potential TF vulnerabilities the authorities analysed measures in place to counter / address TF. For this purpose, the following aspects were analysed by the authorities: political commitment, quality of legislation, awareness and understanding of TF issues, adequacy of resources, geographic and demographic factors, the extent to which services or products offered by Sammarinese OEs are likely to be attractive for TF purposes.

27. In order to complement the analysis of TF vulnerabilities the Sammarinese authorities referred to the EU supranational risk assessment which provides for a list of those products and services most exposed to TF. As a result of the analysis of these products and services, San Marino in its NRA noted that there is a small possibility of misusing cash transactions and pre-paid cards for TF purposes.

28. San Marino conducted an analysis of the whole NPO sector to determine NPOs that fall under the FATF definition and are at risk. Only 1.2% of NPOs (5 out of 403) are in this category. In general, the authorities concluded that there is a low level of risk that NPOs will be used for TF.

Interaction with Italy

29. The 2019 NRA provides for detailed information on the relationship between San Marino and Italy, e.g. political, economic and social ties. In the context of ML threat analysis a detailed analysis is provided on the origin of the predicate offences for ML cases (most of which originate from proceeds of predicate offenses committed in Italy or perpetrated by Italian persons, including issue related to mafia-type predicate offences or corruption generated abroad or value-added tax (VAT) related crimes mostly connected with Italy). Although proceeds of tax crimes committed could also be susceptible of laundering in San Marino, the threat emanating from this type of crimes is nowadays significantly lower, as a result of the recent tax amnesties in Italy.

30. The 2019 NRA analysis on ML vulnerabilities consider, *inter alia*, the issue of cross-border movement of cash and BNIs between the two countries and shadow economy. On cross-cutting issues San Marino also considered presence and percentage of Italians holding or controlling directly or indirectly or through other means of San Marino domestic legal persons. Same analysis was carried out with respect to trusts.

31. On TF issues, San Marino also considered the TF methods and trends related to Italy using reliable Italian sources of information (i.e. ISPI etc).

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

Country's Risk Assessment

32. In 2019 San Marino conducted its second NRA to update the risk assessment conducted previously in 2015 (2015 NRA). In the 2019 NRA, an extended set of data and information was used and the WB methodology was integrated with an assessment of additional risk factors in order to address the TF risk more specifically. Moreover, the assessment of other potential risks arising from the so called "cross-cutting" sectors and products was carried out.

33. The FIA led this assessment exercise supported by the TCNC. All relevant stakeholders (the Court, the CBSM, Police Forces and Interpol, Tax Office, Office for Control Activities, Office for

Economic Activities, Central Liaison Office, Statistic Office, Chamber of Commerce, Civil Registration, Demographic and Election Office) and representatives of the private sector participated in this assessment.

34. The NRA identifies and assesses the ML/TF threats, national and sectorial ML vulnerabilities to which the country is exposed. In addition, the 2019 NRA analyses the use of cash, assesses the NPO sector, legal persons and trusts.

Scoping of Higher Risk Issues

35. The AT identified following areas which required an increased focus through an analysis of information provided by the San Marino authorities (including the NRA) and by consulting various open sources:

- **Financing of terrorism:** Despite of the fact that the TF risk in San Marino is low and has a sound legal framework, the assessors focused on assessing the TF investigations conducted. (As noted in the NRA there were instances when TF investigations were initiated by law enforcement, however no TF elements were identified). In 2019 San Marino adopted a new Law on TFS, for this purpose the assessors assessed the practical implementation of this Law by relevant parties.
- **MLA and other forms of international cooperation:** ML/TF issues have a significant cross-border element. The robust MLA mechanisms and other forms of international cooperation are essential for San Marino. For this purpose, the assessors analysed the effectiveness of MLA and other forms of cooperation with their foreign counterparts and how San Marino proactively sought international assistance, including challenges in this area (access to information, timeliness of handling requests, quality of responses).
- **ML investigations, prosecutions and convictions:** according to the statistics provided by the Sammarinese authorities, the number of ML prosecutions and convictions appears to be reasonable, in particular third-party ML and autonomous ML prosecutions. The assessors in any case examined the extent to which the authorities understand the ML offence, especially the laundering funds generated by foreign predicates.
- **Operational and strategic analysis:** The 2015 NRA stated that at the time of the risk assessment exercise San Marino financial intelligence unit (FIU) was not carrying out strategic analysis. Subsequently the AML/CFT Law was amended to introduce a new requirement for the FIU to carry out strategic analysis. The AT looked at the results and the way strategic analysis was being carried out. The assessors also looked at how the results are communicated to the competent authorities and the private sector, as well as the use of those results.
- **Seizure and confiscation:** The assessors examined provided statistics and cases by San Marino related to the proceeds seized and confiscated, including the amounts, in order to identify the effectiveness of the regime. Focus was to identify whether implementation of the measures to seize and confiscate relate to the main predicates (e.g. recovery of foreign tax evasion proceeds and associated ML).
- **Compliance by OEs:** According to the authorities FIs' understanding of ML/TF risks and compliance with AML/CFT obligations is satisfactory overall and the DNFbps' understanding of ML/TF risks and compliance with AML/CFT obligations has increased during recent years. The AT assessed the understanding of domestic and cross-border ML and TF risks by OEs, how they managed the identified risks and implemented CDD requirements focusing on most material and vulnerable sectors (banks and other FIs).
- **Supervision:** Over the last 10 years, the financial system of San Marino has encountered many issues due to external and internal factors, pertaining to individual banks and the system overall. According to case examples provided by San Marino there were cases where

higher management was involved. For this purpose, the AT assessed the effective implementation of supervision with a greater focus on the market entry.

1.2. Materiality

36. San Marino has signed a Monetary Agreement with the EU in 2012 and as such is committed to adopt the relevant EU legislation in the area of euro banknotes and coins, fight against fraud and counterfeiting, banking and financial legislation, including the prevention of money laundering and of terrorism financing and statistical reporting requirements. Due to its geographical position, institutional and economic relations with Italy play a particularly important role. In the AML/CFT framework, an Agreement between San Marino and Italy on cooperation in the prevention and repression of crime was signed in 2012.

37. San Marino's financial sector is bank-centric, oriented to providing mainly retail financial services to mostly local customers. San Marino is not known for being an international finance centre or having a large international trading economy, nevertheless, San Marino shows some characteristics and features of a regional financial centre. The financial system of the Republic of San Marino is currently facing a complex situation that began in 2008, with process of sharp bank disintermediation, that contributed, inter alia, to increase the relevance of new nonperforming loans in the banks' assets, due to the global financial crisis and some local issues (e.g. legal proceedings involving the main bank of the system). The bank disintermediation, with a strong reduction in financial asset, was mainly driven by Italian fiscal amnesties and a progressive reduced attraction of San Marino as jurisdictions with lower levels of transparency. These factors occurred following a period of high growth in traded volumes and were grafted into a changing regulatory framework. Most foreign customer in San Marino are Italian residents. In June 2020, the percentage of non-resident deposits amounted to 15,5% of all deposits in San Marino's banks.

38. No information on the size of shadow economy is available in San Marino. However, the 2019 NRA recognises that legislation and supervisory instruments are in place to encourage formal economic activity, as well as National AML/CFT Strategy and related Action Plan envisages implementation of tools to measure the informal economy (so-called "shadow economy") with appropriate indexes. In relation to financial inclusion, San Marino residents and nationals have widely access to the financial system. The cost of financial services is similar to those provided by neighbouring country. As San Marino is an enclave in Italy about 6.000 Italian residents cross the border every day to work in San Marino enterprises.

1.3. Structural Elements

39. San Marino has all the necessary structural elements required for an effective AML/CFT system including political and institutional stability, a high-level of commitment to address AML/CFT issues, stable institutions with accountability and transparency, the rule of law, and an independent judicial system.

1.4. Background and Other Contextual Factors

40. San Marino has a mature and sophisticated AML/CFT system.

41. In July 2016, Group of States against Corruption (GRECO) underlined the need for San Marino to ratify the Criminal Law Convention on Corruption and its Additional Protocol and to fully incorporate them into national law, in particular by criminalising private sector corruption and trading in influence. In this regard San Marino has taken the necessary steps to strengthen financial discipline in the day-to-day operations of political parties. Such important efforts were acknowledged by GRECO. Nevertheless, GRECO called for additional legislative improvements to fill gaps regarding non-monetary donations, events of mergers, splits or shutdowns of political parties

and their remaining funds, as well as accounting obligations of independent members of Parliament. GRECO further recommended strengthening the current system for supervising the rules on political financing, investigating alleged infringements and ultimately providing for effective sanctions.

42. Another positive achievement that is worth mentioning is that in 2018, a large number of the political *elite* of San Marino were convicted with reference to the so-called “*Conto Mazzini*” and sentenced (on the 1st trial degree) to many years of imprisonment. Significant amounts of assets were confiscated. For more information please refer to IO.1, IO.3 and IO.7.

1.4.1. AML/CFT strategy

43. In August 2016, following the 2015 NRA exercise and to reduce identified ML/TF risks, San Marino adopted the National AML/CFT Strategy with the decision of the Congress of State. 2016 National AML/CFT Strategy sets out 4 strategic objectives and 16 Actions to enhance the national AML/CFT system. To implement these strategic objectives detailed National AML/CFT Action Plan was adopted. In July 2020, following the adoption of the second NRA in 2019, San Marino adopted the new 2020-2022 National AML/CFT Strategy and the related Action Plan with the decision¹⁶ of the Congress of State. The National AML/CFT Strategy consists of mitigating measures (extending from policies to concrete activities) tailored to the ML threats and vulnerabilities identified in the NRA process. The National AML/CFT Strategy aims at achieving a more complete and effective system for combating economic crime. The document reflects the actions necessary to achieve the objectives, the expected results and the competent Authorities involved. In addition to these strategic documents, the 2019 NRA contains Priority Actions related to formalisation level of economy, effectiveness of customs, effectiveness of tax enforcement, financial integrity, independent audit etc.

44. Moreover, in July 2016 the Congress adopted decision establishing a working group with the task of developing a National Security Plan in the terrorism field. The working group elaborated a “Counter Terrorism Strategy” (CT Strategy) and proposed to the Parliament a new piece of legislation aimed at strengthening the prevention of terrorism and its financing. Such legislation was adopted in January 2019.¹⁷

1.4.2. Legal & institutional framework

Legal framework

45. The AML/CFT legal framework in San Marino is governed by Law No. 92 of 17 June 2008 on the Prevention and combating of money laundering and terrorist financing (AML/CFT Law), Law No. 57 of 29 March 2019 on Measures for preventing, combating and suppressing TF, PF and the activities of countries that threaten international peace and security (Law No. 57), Criminal Code and Criminal Procedure Code of the Republic of San Marino, FIA’s instructions, circulars and guidelines.

46. Since the adoption of the 4th round MER of San Marino there had been a number of legislative developments, including and not limited to the following: Law No 100 of 29 July 2013 on the criminalisation of self-laundering. The criminal liability of legal persons was introduced by Law No. 6/2010 and reviewed by Law No. 99 of 29 July 2013 and applies to all ML predicates. San Marino acceded to several international conventions on the suppression of terrorist acts and transposed into the legal order a number of related offences. Decree-Law 25 July 2013 no. 98 amended the definition of PEP contained in the Technical Annex of the AML-CFT Law.

¹⁶ <http://www.interni.segreteria.sm/on-line/home/delibere-congresso-di-stato/documento25118328.html>

¹⁷ Law of 31 January 2019, No. 21 on “Establishment of bodies aimed at countering international terrorism”.

Institutional framework

47. The main agencies involved in San Marino's institutional framework are the following:

48. The **Credit and Savings Committee (CSC)** is an administrative body chaired by the Secretary of State for Finance and Budget and composed of 2 to 4 persons (Ministers) nominated by the Congress of State among its own members. The Committee for Credit and Savings is assigned the function of high supervision, directing and guiding, in coordination with the CBSM, the activity of banking, finance and insurance supervision and shall also be responsible for promoting national and International cooperation for the effective prevention and countering of ML and TF. National AML/CFT policies are determined by the CSC.

49. The **Technical Commission for National Coordination (TCNC)** is responsible for facilitating at national level co-operation, coordination and consultation concerning the development and implementation of AML/CFT policies and legislation and ensuring that the competent authorities review the effectiveness of the AML/CFT system on a regular basis. The TCNC is composed of representatives of the most relevant AML/CFT competent authorities: the Court, the CBSM, the FIA, the Commanders of Police Corps and representatives of the officers responsible for investigations in the field of AML/CFT. The TCNC is entrusted with the task of reporting on a regular basis to the CSC with regard to legislative and administrative measures which are deemed necessary to improve the effectiveness of the AML/CFT system.

50. The TCNC is also entrusted with the task of coordinating the activity of combating money laundering and terrorist financing carried out by competent authorities. According to Art. 16 *quater* of the AML/CFT Law, the TCNC supports the State Departments in identifying the policies and activities to prevent and combat money laundering and terrorist financing that are consistent with the results of the national assessment and aimed at mitigating the risks identified.

51. The **Committee for Restrictive Measures (CMR)** co-ordinates the implementation of the international financial sanctions to counter TF and PF. Currently, the CMR is the authority responsible for the implementation of restrictive measures of the UNSCRs. The CRM is composed of the Director of the Foreign Affairs Department who presides over its meetings, the Director of the Department of Institutional Affairs and Justice, the Director of the Department of Finance and Budget, the Commanders of the Police Forces, the Director of the National Central Bureau of Interpol (NCB Interpol) and of the Asset Recovery Office (ARO), the Director of the FIA.

52. The **Ministry of Foreign and Political Affairs (MFA)** is responsible for implementing San Marino's foreign policy: it establishes programmes according to the international policy objectives outlined by the Government and it represents the State in its political, economic, social and cultural relations with foreign countries. According to Art. 16 bis of the AML/CFT Law, the Department of Finance and Budget and the Department for Foreign Affairs shall coordinate the activities related to the national assessment of the risks of money laundering and terrorist financing.

53. The **Ministry of Finance and Budget** is the political body that deals with all matters of economic, financial, and budgetary policy, tax policies, tax system, planning of state investments, verification, and control of public spending. Together with the other Ministries, it promotes the economic and territorial development of the Republic of San Marino. According to the AML/CFT Law, the Department of Finance and Budget of the Ministry of Finance and Budget and the Department for Foreign Affairs of the Ministry of Foreign Affairs shall coordinate the activities related to the NRA.

54. The **Court of the Republic of San Marino** is internally subdivided according to the civil, criminal, administrative, juvenile and family matters, to which the single Law Commissioners are assigned by the Head Magistrate. Bodies of the judicial power include the Highest Judge of Appeal, the Judge of Appeal, the Law Commissioner, and the Clerk (*Uditore Commissariale*). Extraordinary jurisdictional functions in the cases provided for by the law shall be assigned to the Judge of Extraordinary Remedies. The Judges shall exercise all jurisdictional functions expressly entrusted to them by the law. The Clerk shall assist the Law Commissioner in his/her activities. The Law

Commissioner may assign or delegate to the Clerk investigating functions in civil, criminal and administrative matters. More than one judge may be assigned to any single judicial office and each judge shall be guaranteed all jurisdictional functions. The *Procuratore del Fisco* shall be the *Magistrato requirente* (referring to an inquiring magistrate, whose role is to put forward questions to a judge - be it inquiring or on the merits - in order to safeguard and guarantee the rights of the public as well as those of all the parties to the proceedings. So, in San Marino the *Procuratore del Fisco* may be considered a hybrid figure between a judge and a public prosecutor).

55. The criminal section of the Court deals with the proceedings concerning the commission of crimes provided for by the Criminal Code (CC) and the Special Laws. The criminal Law Commissioner (Investigating Judge) is responsible for the investigation and prosecution of all crimes, including ML, TF and PF.

56. The **Central Bank of the Republic of San Marino (CBSM)** is a private legal entity with public and private shareholders. The major shareholder of CBSM is the State (which is required by law to keep a majority shareholding); a minority interest in the capital of the Bank may be held also by the banks, financial companies and insurance enterprises of San Marino (currently 5 banks hold 33% of CBSM share). Despite the presence of supervised entities in the CBSM capital they cannot appoint any member of the Governing Council, following Art. 10 of Law 95/2005 they are appointed by the Great and General Council (the parliament of San Marino). The CBSM is the prudential supervisory authority for banking, financial and insurance services in the Republic of San Marino. The purposes of CBSM are defined by the law and include, inter alia, the promotion of the stability of the financial system and the protection of savings through supervision of the credit, financial and insurance activities.

57. The CBSM (acting in its capacity as the AML/CFT supervisory authority) deals with a new supervised entity's access to the market from the initial phase by issuing the authorisations required by law. After this, the CBSM checks to make sure that the activity of the authorised entity is conducted in compliance with the regulation and also in such a way as to guarantee the sound and prudent management of the FIs. The CBSM possesses the power to take measures and apply sanctions.

58. The CBSM is also assigned with other functions among which:

a. in the field of trusts, the CBSM supervises financial trustees (if the office of trustee is exercised by a person authorized under the Law No. 165 of November 17, 2005); checks the existence and permanence of the requirements for the professional exercise of the office of trustee in the territory of San Marino for more than one trust, for the purpose of keeping the PT Register keeps the Register of the Trust and keeps the Register of the Beneficial Owner(s) of trust under the AML/CFT Law;

b. maintains the Register of fiduciary shareholdings. The CBSM is required to establish the register of fiduciary shareholdings (*archivio partecipazioni fiduciarie* or APF), which contains information on the shareholdings in companies of San Marino held by fiduciary companies from San Marino or abroad. In addition to the receipt and storage of the data, the CBSM cooperates with the competent Offices of the Public Administration, with the Commissioner's Court – Criminal Section and with the Antifraud Unit of the Civil Police.

59. The **Financial Intelligence Agency (FIA)** is the Financial Intelligence Unit (FIU) of the Republic of San Marino established at the Central Bank of San Marino but is not part of the CBSM. It is in charge of receiving and analysing STRs and other disclosures related to money laundering, associated predicate offences or financing of terrorism, requesting information from the obliged parties and disseminating to the San Marino Judicial Authority (JA) any fact that might constitute money-laundering, associate predicate offences or terrorist financing. The FIA cooperates with foreign FIUs in order to prevent ML and TF. The FIA is also the sole regulator and supervisor for AML/CFT obligations.

60. The **Gendarmerie** is a military Police force with specific competences concerning public order and security matters. The Gendarmerie has been established to prevent and repress crimes, monitor public order, the safety of citizens, protect property, take care of compliance with state laws, provide assistance in the event of a disaster. The Gendarmerie, which is the most articulated police force in the territory of San Marino, has set up proactive activities and investigations for the prevention of terrorism and financing of terrorism related cases through a constant and careful monitoring of the San Marino social reality.

61. The **NCB INTERPOL of the Republic of San Marino** is the national central authority responsible for establishing contacts with the competent offices and authorities of foreign states with regard to co-operation in criminal police and security matters. It is also responsible for the technical and operational application of international conventions and bilateral and multilateral agreements signed and ratified by the Republic of San Marino in the field of international police cooperation. The NCB guides and ensures the operations for the active and passive extradition of prisoners, the exchange of information in relation to international police activities and operational activities carried out by Police Corps involving international police cooperation.

62. The NCB also performs the functions of:

- a. ARO;
- b. national focal point in the framework of the World Bank/Interpol StAR Project;
- c. national point of contact of the Network of the Council of Europe (COET);
- d. national Point of contact for the Counter – Terrorism Network CTN of OSCE.

63. The **Fortress Guard** is a military Police Force responsible for public order. The Fortress Guard is entrusted with the task of monitoring the observance of the laws and patrolling the State borders, the Government Building and the institutional seats. The Fortress Guard carries out border controls and is entrusted with customs tasks. In the framework of such activity, the Fortress Guard conduct controls over cross-border transportation of cash and similar instruments.

64. The **Civil Police** is a non-military corp. The Civil Police is entrusted with the task of supervising the citizens' freedom and rights, public order and security, as well as the observance of laws, preventing and repressing crimes and assisting in case of calamities and accidents. The Civil Police also performs some specific functions concerning fraud (and related cases), hygiene and social security, civil protection and firefighting, protection of employees and of the environment, control, protection and prevention in the fields of commerce, tourism, food and road traffic, verification of personal/ demographic data.

65. The **Antifraud Squad at the Civil Police** prevents and combats tax fraud, fraud, distortions and anomalies regarding the exchange of goods and services. In order to perform such functions, the Antifraud Squad performs administrative controls (so called "Preliminary checks" and "Merit checks") in economic / financial matters with economic operators mainly wholesale businesses, service license holders or other activities with sensitive social objects (on initiative or at the request of other administrative offices). The Antifraud Squad also acts as the judicial police.

66. The **Office for Economic Activities (OEA)** is a competent authority assigned with several functions among which the maintenance of registers of legal entities, the granting of authorisations, which falls under the competence of the Congress of State, the compliance with administrative formalities relating to the preparation, certification and issuance of licences and certificates in the areas of relevance to the Organisational Unit.

67. The **Office for Control Activities (OCA)** is established at the Department of Economy at the Ministry of Industry (former OCSEA). It performs, directly or through the administration unit or other authorities, activities aimed at preventing and combating tax fraud, as well as scams and distortions in the field of interchange. The OCA also performs controls on economic activities and on

economic operators organized in the form of an enterprise and ensures effective control of compliance with licensing regulations. Among other relevant activities which are related to AML/CFT matters, the OCA is the office in charge of Register of BOs for legal entities.

68. The **Central Liaison Office (CLO)** is a competent authority to implement and follow up on the administrative cooperation and exchange of information in tax matters, in accordance with the international agreements in force between the Republic of San Marino and other States and Jurisdictions. The CLO is an autonomous body (not a part of the Tax Office). The responsibilities of the CLO extend to San Marino's network of Tax Information Exchange Agreements (TIEAs) and Double Tax Conventions (DTCs), the Convention on Mutual Administrative Assistance in Tax Matters (MAAC), as well as exchange of VAT-related information under administrative agreement with Italy. The CLO is also the competent authority for the exchange of information with the United States under its Foreign Account Tax Compliance Act (FATCA).

1.4.3. Financial sector, DNFBPs and VASPs

Financial sector

Table 1: Authorised (supervised) entities

Authorized (supervised) entities	2020*
Banks (operating) ¹⁸	4
Asset Management companies	3
Financial and fiduciary companies	2
Investment companies	0
Life Insurance companies	2
Payment institutions	1
San Marino Poste (MVTs)	1
Insurance and reinsurance intermediaries	31
Total	44
*As at 30.06.2020	

69. As of June 2020 San Marino's banking sector consists of 4 operating banks. Given its size, the banking sector is the most important sector of the Sammarinese financial system. Banks focused primarily on retail banking and all branches of such banks are located in San Marino. Banks provide their products and services via traditional distribution channels. Over recent years, the number of domestic bank branches has slightly reduced as a result of streamlining and rationalisation of branch network's operations. Banks simultaneously provide e-banking services allowing remote access to bank products and other services. The ATM network is one of the basic distribution channels. Given that San Marino is an enclave in the Italian territory, and business ties between the two countries, a part of bank day-to-day transactions are represented by cross-border operations with Italy.

70. The banking system of San Marino experienced a sharp reduction with total assets decreasing from 11.3 bn (2008) to 4.6 bn (December 2018) and the number of operating banks has more than halved (in June 2020 there were only 4 operating banks). The banks' funding is typically domestic considering that the volumes of deposits from non-resident customers is less than 15.5%. On the other hand, gross loans to customer represent a higher percentage of loans granted to foreign clients over the last four years, mainly to Italy. With reference to the ownership structure, this is mostly domestic. Foreign owners directly control approximately 9,7% of the share capital of the

¹⁸ 4 banks also provide services of professional trustee.

Sammarinese banks. In this regard, two banks had a majority of foreign ownership structure, which is controlled by resident beneficial owners. The funding of banks is typically domestic considering that the volumes of funding from non-resident customers is less than 20%, a percentage in line to the incidence of non-resident customers. As data shows, the decrease of non-resident deposit has been constant in the recent years, driven by fiscal amnesties of Italy, but also by the efforts of San Marino towards transparency and international cooperation.

Table 2: Direct deposit amounts¹⁹

Direct deposit (€/million)	2015	2016	2017	2018	2019	2020*
Resident	3 768	3 663	3 338	3 290	3 073	3 014
Non resident	1 090	915	740	639	558	548
Total	4 858	4 577	4 079	3 929	3 631	3 562
% non- resident	22%	20%	18%	16%	15%	15%

*As at 30.06.2020

71. There are 2 life insurance companies in San Marino with technical provisions amounting to €271 million (June 2019) and about €8 million of 2019 insurance premium. There are 39 foreign insurance undertakings authorised to conclude insurance contracts through insurance intermediaries authorised by the CBSM. The insurance intermediaries are part of the financial distributors' sector. Typical products of Sammarinese life insurance companies are traditional life insurance and unit-linked investment insurance products.

72. Only one payment institution is active as of June 2019. This institution is providing issuing and acquiring services and it does not carry out cross border activities. The amount and number of transactions with cards issued, from 01 January 2019 to 06 March 2019, are €38,7 million in €498 132 number of payments. The number of credit cards issued by the Payment Institute as of June 30, 2019 was 10 556. The customer based is mainly domestic with more than 85% of customers being San Marino residents.

73. There are 3 management companies that manage 20 investment funds. 4 of the investment funds are closed end and reserved exclusively to Sammarinese banks, to manage non-performing loans. The total assets of the 20 funds amounted to €202 million as of 30 June 2019. All the three management companies are domestically owned, controlled by Sammarinese banking groups. In this regard, portfolio asset managers market their services in cooperation with Sammarinese banks that act as distributors.

74. The sector of Financial companies and fiduciary companies consists of 2 operators and the assets under management equal to €129 million as of December 2019. At present financial and fiduciary companies (FFCs) manage financial instruments portfolio, leasing and fiduciary mandates. The ownership structure of these firms is represented by a Sammarinese Banks (in one case) and by resident individuals (in the other one). As of December 2018, about 40% of total asset managed by these companies relate to non-resident customers (mainly from Italy).

75. Insurance intermediaries (insurance agents, insurance brokers and their collaborators) are other supervised entities operating in San Marino. The number of insurance and reinsurance intermediaries enrolled in the CBSM's Register is 31. As far as the client base is concerned (based on experience from on-site inspections), most of clients are natural persons resident in the San Marino

¹⁹ Source: The CBSM.

Republic. As to the structure of products offered, they are mainly standard insurance or investment products provided by insurance or management companies. Insurance companies are responsible for the control of the intermediaries. The volume of activity referred to insurance intermediaries corresponds to about €36 million that are gross annual premiums collected on behalf of foreign insurance companies and therefore these assets are not managed by the domestic financial entities. Non-life insurance products are offered exclusively by foreign insurance companies (mainly Italian companies or companies with an Italian permanent establishment). Generally, insurance intermediaries may carry out cross-border activities with Italy since such activities are authorized by the competent authorities of the two countries.

DNFBPs sector

Table 3: Number of DNFBPs

Number of DNFBPs	2020*
Trust or company service providers ²⁰	16
REAs	21
Providers of service related to games of chance and gaming houses	1
Lawyers and notaries ²¹	125
DPMS	35
Accountants ²²	118
Auditors and Auditing firms	5
Total	321
*As at 30.06.2020	

76. All types of DNFBPs, apart from casinos, are operating in San Marino. The services offered by lawyers and notaries overlap as by the legislation they can offer both services. This means that all lawyers can provide notarial services and no additional registration as a notary is required. Notarial services that the lawyers and notaries perform are mainly involved with the buying and selling of movable and immovable property, particularly in respect of real estate, as well as providing services related to the incorporation of legal entities. The number of Lawyers and Notaries operating in San Marino registered with the Register of Lawyers and Notaries is 125 as at 30 June 2020.

77. In addition to providing accounting and auditing services, accountants may also perform the function of PTs in a trust. As of 30 June 2020, 4 accountants were performing services of PTs. The number of accountants operating in San Marino and registered with the Association of Chartered Accountants and Accounting Experts is 118 as at 30 June 2020.

78. There are 14 trust service providers, 2 company service providers and 5 FIs (4 banks and 1 FFC) which act as PTs. If a trustee is not remunerated for his services, there is no obligation to register with the CBSM, on a condition that they only provide trustee services to one trust. Under the trust law, trustees that manage more than 1 trust must be authorized by the CBSM and then enrolled in the PT register. 14 registered PTs manage assets with value of €34 million, based on settlor contribution of €16 million, of which 67% are from residents and 33% from non-residents (mainly from Italy). The number of NPTs is 6. PTs manage 49% of all trusts resident in San Marino. The 32%

²⁰ 4 TCSPs also provide services of professional trustees

²¹ 2 Lawyers also provide services of professional trustees

²² 4 Accountant also provides services of professional trustees

of the trusts is managed by NPTs that are TCSPs (8% of total value) and the 19% by NPTs (8% of total value).

79. REAs are OEs operating, as intermediaries, in one or more of the following areas: selling, buying and renting real estate and provision of other services such as property valuation. While all contracts of selling or buying of real estate are subject to authentication by a Notary, real estate sale occur without the intervention (in payment transactions) of a real estate agent who does not receive any payments. Real Estate payments are always made through bank accounts held by sellers and buyers and Notaries identify in the notary deed the modalities of payments and the financial instruments used (e.g. wire transfers, cheques) and the relevant identification data (current account code numbers, holder identification data, banks, identification number of cheques, etc.). There are 21 REAs in total, both companies and individual operators, who act as intermediaries for both the sale and rental of real estate.

80. The operation of casinos (including internet casinos) is prohibited in San Marino. The only games allowed are operated on an exclusive basis where the State has a majority stake. Such companies are entrusted with the management of the premises and operating structures where the gaming activities are carried out. There is only one obliged entity in this sector authorised and operating in San Marino which is majority-owned by the state.

81. There are 35 DPMS, both natural persons and operators having corporate form. The total turnover of DPMS has significantly decreased during latest years from €69 million in 2014 to about €24 million in 2018.

82. Managers of auction houses, art galleries or traders in antiques included 20 obliged parties, both individuals and companies. The activity of auction houses consists in organizing both in-house and on-line auctions. Art and antiquity dealers operate both at the premises of the company and on-line. These OEs carry out both their own activities and on behalf of third parties for their role as intermediaries. San Marino has applied AML/CFT obligations to this sector based on considerations of ML/TF risk exposure²³. However, this sector does not fall under the definition of the DNFBPs as outlined in the FATF Glossary, therefore it is not part of this assessment.

VASP sector

83. Since 2020, there are 2 Blockchain Entities registered in the register held by San Marino Innovation. The respective business activities of these 2 entities are in the field of cybersecurity consulting development of complex system aiming at bridging the language barrier. However, these 2 entities do not fall under FATF's definition of VASP as they are not allowed to issue investment tokens.

1.4.4. Materiality and level of ML/TF risks of the different FIs and DNFBPs

84. This section explains how the assessors weighted the relative importance of the different types of FIs, DNFBPs and VASPs in San Marino, taking into account the country's unique risks, materiality and context:

85. **Most important** is the banking sector as it has by far the largest share of the financial sector's total assets (88%), customer base and it undertakes the vast majority of cross-border transactions. The main products offered by the Banking Sector and used in ML cases are the following: 1) current accounts including current accounts in foreign currency (in particular, US Dollars); 2) depositing securities; 3) keeping saving deposits. These products, from the analysis of ML cases, have been used mainly to perform cash/checks deposits and withdrawals, bank transfers, and for investment purposes, purchase and sale of shares and bonds (including bonds issued by domestic banks). Other

²³ 2019 NRA identified as managers of auction houses, art galleries or traders in antiques to have moderate ML/TF risk exposure.

products used have been pre-paid credit cards (mainly used to withdraw cash) and safe-deposit boxes. The NRA identifies banks being exposed to medium-high level of ML/TF risks.

86. **Highly important** sectors are: financial and fiduciary companies, life insurance companies, lawyers/notaries, accountants/auditors, DPMS and San Marino gaming house.

87. *The financial and fiduciary companies*: This sector is at risk of being misused for committing ML/TF in particular, when performing fiduciary administration of securities assets, shareholdings, loans to third parties, depositing and transferring funds abroad (also with voluntary tax compliance (VTC) purposes) or to depositing foreign cheques then withdrawn by cash. The NRA identifies their exposure to risks as medium.

88. *Life insurance companies*: The life insurance sector is at risk of being misused for committing ML/TF, in particular, due to its links with the banking sector since the latter usually sells to or places the insurance products with its customers. The NRA identifies their exposure to ML/TF risks as medium.

89. *DNFBPs: (lawyers/notaries, accountants/auditors, DPMS, San Marino gaming house)*. There have been cases of involvement of lawyers and notaries and accountants and auditors in the past to conceal illicit proceeds. The NRA has identified their exposure for ML/TF risk as medium. In relation to San Marino gaming house and DPMS their ML/TF risk exposure is medium.

90. **Moderately important** are: the asset management companies, a payment company and the real estate sector, where exposure to ML/TF risk is considered as medium-low.

91. **Less important** sectors are: insurance and re-insurance intermediaries, TCSPs and San Marino Poste, where exposure to ML/TF risk is considered as medium-low. No VASPs are registered in San Marino at the moment of evaluation.

1.4.5. Preventive measures

92. The AML/CFT Law and subsequent amendments (and relative Technical Annex) set out provisions on the prevention and combating of money laundering and terrorist financing. All FIs and DNFBPs are subject to AML/CFT obligations except for NPTs. But as stated below when NPTs do not receive remuneration they are not considered OEs. They shall nonetheless apply specific AML/CFT obligations consisting in: record keeping obligations; obligation to provide information to FIA upon request; reporting requirements.

93. Law No. 165 of 17 November 2005 on companies and banking, financial and insurance services provides licensing regime for FIs. Detailed AML/CFT measures are provided in various Laws, Decree-Laws, Delegated Decrees (DDs), FIA Instructions and Circulars, CBSM Regulations (that are considered enforceable means as per the FATF Methodology 2013). However, FIA Guidelines and CBSM Recommendations are not considered as enforceable means.

1.4.6. Legal persons and arrangements

Legal persons

94. Legal persons in San Marino can be created in a form of companies or partnerships. This creation process is governed by Law No. 47 of 23 February 2006. Subsequently companies can be created in different types of business entity, namely SRLs and joint-stock companies (SPAs). In addition, a legal person can be created in a form of “blockchain entities” whose activities are set forth under DD No. 86 of 23 May 2019.

95. According to the Register of Companies held by the Officer for Economic Activities, at 30 June 2020, the number of the registered companies amounted to 5,581 companies. Of which 2,695 are

companies that carry out business activities and 2,886 are companies under procedures (e.g. voluntary liquidation, compulsory liquidation) and no active licences.

Table 4: Number of legal persons

TYPE OF COMPANIES	2015	2016	2017	2018	2019	2020*
SPAs	477	460	449	445	437	437
Limited liability companies	4 897	4 951	5 017	5 158	5 125	5 139
<i>Società in nome collettivo</i>	0	0	1	4	5	5
Total	5 374	5 411	5 467	5 607	5 567	5 581
*As at 30.06.2020						

Table 5: Number of companies registered²⁴ per year (2015 to 2020)

TYPE OF COMPANIES	2015	2016	2017	2018	2019	2020*
SPAs	7	7	5	9	7	3
Limited liability companies	282	213	209	213	207	79
<i>Società in nome collettivo</i>	0	0	1	3	1	0
Total	289	220	215	225	215	82
*As at 30.06.2020						

96. Almost 76% of legal persons are directly owned by citizens of San Marino or Italy. In general, the most common type of ownership is direct ownership (79%), while the other forms represent a residual value: Indirect ownership (8%), Discharging of administrative responsibilities (6%), Control by other means (5%) and indirect ownership through other means (1%).

Legal arrangements

97. Trusts are governed by the Law 42/2010 and DDs no. 49, 50 and 51 of 16 March 2010 which set forth specific provisions. The Office of the Trust Register was established at the CBSM. All applications for the registration in or cancellation from the Trust Register as well as the applications for the release of the relevant certifications must be presented at that Office. The same Office also maintains the register of trust BOs.

98. Following the Law 42/2010, the activities of a trustee can be carried out either as a PT or as a “non-professional trustee” (NPT). The PT acts as trustee, in the Republic of San Marino, for more than one trust and its activity is subject to a preliminary authorisation of the CBSM, following criteria and procedures defined by the Regulation 2010-01, which establishes 3 categories of subjects: FIs, Corporations (SPAs and limited liabilities companies) and professionals (lawyer, notary and accountants). The NPT acts as trustee only for one trust.

²⁴ The total number of the companies in one year is not only affected by the number of the newly established companies in that year (as indicated under Table 5) but also by the number of the companies deleted from the register

99. In the context of AML/CFT framework, regardless of the number of trusts for which the trustee acts, whether the trustee receives a remuneration, it is considered an obliged entity as defined under Art. 1, para 1, letter n) ter and Art. 19, para 1, letter a) of the AML/CFT Law within the category of TCSPs. When NPT do not receive remuneration are not considered OEs, although shall apply specific AML/CFT obligations consisting in: record keeping obligations; obligation to provide information to FIA upon request; reporting requirements. Specific sanctions in the event of non-compliance are provided for as set under Art. 4 of the Delegate Decree no. 49 of 16th March 2010 – as amended by the Law No. 123/2019.

100. As of 31.12.2018 there were 25 resident trustees: of these, 5 were FIs, 3 were Professionals and 1 was a Legal Entity (joint-stock company), 10 were TCSPs-NFPs, and 6 were classified as NPTs under the AML/CFT Law, not receiving any remuneration regarding the single trust managed (Not NFPs). As of 31.12.2018 there were 82 non-resident trustees, of which 78 trustees resided in Italy, 3 in Switzerland and 1 in Luxemburg.

Table 6: Number/value of trusts administered by resident trustees

Number/ Value of Trust Administrated by Resident Trustee	2014	2015	2016	2017	2018	2019	2020*
No. trust	23	25	26	26	31	37	39
Total value (€)	43 719 168	46 456 772	45 789 940	37 154 308	40 305 236	53 293 451	67 151 472
*As at 30.06.2020							

1.4.7. Supervisory arrangements

101. The FIA is the designated authority responsible for AML/CFT regulation and supervision for all FIs and DNFBPs in San Marino. The functions of the FIA include (i) issuing instructions, circulars and guidelines regarding the prevention and combating of money laundering and terrorist financing, (ii) supervising compliance with relevant legislation, instructions and circulars issued by the Agency by adopting a RBA pursuant to Art 4 (1)(d) and (e) of Law 92/2008. The FIA is established at the Central Bank of the Republic of San Marino and performs the functions assigned to it by Law 17 June 2008 n. 92.

102. The CBSM is prudential supervisor responsible for regulation and supervision of banking, financial and insurance sectors (Art. 37-39 of the Law 165/2005). Core Principle institutions, other FIs, MVTs and money or currency exchange service providers require authorisation by the CBSM to provide financial services in San Marino. For all authorised entities that exercise reserved activities as defined under Attachment 1 of Law 165/2005, CBSM verifies fit and proper requirements.

103. The CBSM also supervises PTs (but not for AML/CFT obligations, which is done by the FIA) and maintains the PT Register pursuant to the Delegate Decree No.49 of March 16, 2010, the Register of Trust pursuant to the Delegate Decree No.50 of March 16, 2010 and the Register of the Beneficial Owner(s) of trust under AML/CFT Law.

104. The CBSM also maintains the Register of Fiduciary Shareholdings (*archivio partecipazioni fiduciarie or APF*), which contains the information on the shareholdings in companies of San Marino held by fiduciary companies from San Marino or abroad.

1.4.8. International cooperation

105. As was previously noted San Marino has some characteristics and features of a regional financial centre. Due to this San Marino is exposed to a higher risk of laundering of proceeds of crime generated by foreign predicate offences. In general predicate offences in San Marino do not generate a huge amount of criminal proceeds to transfer abroad, this is also confirmed by a low-level criminal environment.

106. San Marino's most active international partners with respect to ML/TF issues is Italy. San Marino competent authorities also quite actively cooperate with other EU countries. With respect to cooperation with other countries, figures show that San Marino cooperates to a negligible extent with other non-EU European countries.

107. In general, San Marino has a comprehensive legal framework to provide international cooperation to its counterparts either through MLA or other forms of international assistance.

108. The main focal points for international cooperation are the FIA, the CBSM and the NCB INTERPOL of the Republic of San Marino, which also serves as a/an: ARO, national focal point in the framework of the World Bank/Interpol StAR Project, national point of contact of the COET, national Point of contact for the Counter – Terrorism Network CTN of OSCE.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

- 1) San Marino completed its first formal and comprehensive NRA in 2015 (2015 NRA), followed by the second NRA adopted in 2019 (2019 NRA). Overall, the authorities (FIA and LEAs, including the Investigating Judges) demonstrated a good level of understanding of the extent to which ML/TF risks can materialise. However, their understanding is hampered by obstacles, i.e. lack of strategic analysis of complex ML schemes bearing in mind the characteristics and features of a regional financial centre and absence of assessment of ML/TF risks emerging from virtual asset (VA) activities and the activities or operations of VASPs. The CBSM understanding ML/TF risks is confined to prudential controls and regulations (including licencing FIs).
- 2) In response to the ML/TF risks identified in the 2019 NRA, San Marino has adopted the AML/CFT Action Plan and the National AML/CFT Strategy, which both to a large extent address the main risks identified in the 2019 NRA. The 2015 NRA was complemented by a National AML/CFT Strategy and an AML/CFT Action Plan as well. The objectives of these policy documents were in line with the identified risks.
- 3) The Sammarinese legislation foresees the possibility of implementation of exemptions and SCDD measures. However, following the adoption of 2015 and 2019 NRAs in practice no SCDD measures or exemptions were adopted.
- 4) The objectives and activities of San Marino's authorities are broadly in line with the NRA and the National AML/CFT Strategy. However, two areas require further emphasis: the risks of ML of the widest range of foreign predicates; the need to actively promote proactive parallel ML investigations into predicate domestic criminality as a policy objective (see IO.7).
- 5) The competent authorities of San Marino cooperate and coordinate the development and implementation of policies and activities to a large extent. Such cooperation and coordination is carried out in different forms (e.g. national AML/CFT policies are determined by the CSC and the Congress of State). The TCNC meetings on different activities take place regularly and the general level of coordination and cooperation is good. In addition, in 2019 the CRM was vested with the main coordination function for TFS in relation TF and PF.
- 6) The private sector was widely involved in the 2015 NRA exercise and, on a slightly less intensive level, in the 2019 NRA. In addition, the authorities provided the necessary outreach (i.e. training, workshops, guidelines) to the private sector. Consequently, the private sector is well aware of the main results of both NRAs.

Recommended Actions

- 1) San Marino should use the results of the strategic analysis of complex ML schemes where San Marino might be used as one of the several jurisdictions bearing in mind the characteristics and features of a regional financial centre and provide awareness training to competent authorities.
- 2) San Marino should identify and assess the ML/TF risks emerging from virtual asset activities and the activities or operations of VASPs.
- 3) San Marino should enhance awareness of the CBSM of ML/TF risks by carrying out training and workshops.

- 4) San Marino should consider ensuring proper assessment of risks to justify and support exemptions prior to their application in practice.
- 5) San Marino should consider enhancing its TF risk assessment by analysing in more detail the threats and vulnerabilities linked to specific sectors and products.

109. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

110. The process of identifying, assessing and enhancing the understanding of ML/TF risks in San Marino started with the establishment of the TCNC in 2009. Since its establishment, the TCNC had carried out several risk assessment initiatives, e.g. on carousel frauds, whose proceeds were laundered in San Marino. San Marino has taken a significant number of steps to enhance its understanding of risks, as a result of these measures, overall, the Sammarinese authorities have a good level of understanding of the extent to which ML/TF risks can materialise.

111. The understanding of the main ML risks and methods identified in the 2019 NRA is equal across authorities due to close involvement in the NRA exercise. In general, the 2019 NRA is of a very good quality. The FIA, which is both San Marino's Financial Intelligence Unit and the AML/CFT supervisory authority of all FIs and DNFBPs demonstrated the broadest understanding of the ML/TF risks. The LEAs and Investigating Judges demonstrated a mixed understanding of ML/TF risks. The CBSM understanding of ML/TF risks is confined to prudential controls and regulations (including licencing FIs). In addition, the FIA showed a good understanding of newly emerging risks, such as ML risk in relation to the Covid-19 pandemic.

ML Risk

112. The 2019 NRA concluded that the overall ML threat level in San Marino is rated between "Medium" and "Medium-High". The LEAs, Investigating Judges and the FIA share this view but noting that the ML threats from laundering of proceeds from foreign predicate offences prevail over those from laundering of proceeds generated by domestic crimes. Subsequently, external threats are considered to be "Medium-High", whereas domestic threats are considered "Medium-Low".

113. The LEA, Investigating Judges and the FIA consider swindling/fraud, misappropriation and crimes related to bankruptcy (e.g. fraudulent bankruptcy) as the main foreign predicate offences which generate significant amount of criminal proceeds, whereas the main domestic predicate offences are swindling/fraud, misappropriation of funds and corruption. The LEAs, Investigating Judges and the FIA views mirror the risks identified in the 2019 NRA. In particular, the 2019 NRA concludes that swindling/fraud and the misappropriation of funds represent a high-level of ML threat, corruption, crimes related to bankruptcy and criminal conspiracy/mafia-type criminal association represent a medium-high level of ML threat. However, the AT does not fully share the Sammarinese view on prioritisation of threats (e.g. the ML threat level of corruption, usury and organised crime given the geographic proximity to and the extremely close economic ties with Italy). However, this has not affected the understanding of risks by the competent authorities as these threats are still listed among the priority ones and the authorities are paying a lot of attention to tackle these issues.

114. As described under Chapter 1 San Marino had assessed the level of ML threat not only based on the amount of proceeds generated, but also other factors (e.g. frequency of ML cases and MLA, proceeds seized and confiscated). Even though the authorities provided this comprehensive explanation, still the AT did not fully share the authorities view. The AT is of the opinion that the

consequences of such offences might not be material or related to international cooperation. Consequences of such threats if they materialise might impact structural elements and other contextual factors, e.g. on society, transparency and integrity of governmental institutions and efficiency of judicial system.

115. All competent authorities confirmed during the on-site interviews that the banking sector has the highest exposure to ML. During the on-site visit the authorities confirmed that for the vast majority of ML cases bank accounts are involved. A medium level of exposure to ML is assigned to the financial and fiduciary companies and to the insurance companies. A medium level of exposure to ML to lawyers-notaries, accountants and import and export sector and DPMS and gaming houses. The AT shares the view of San Marino on the level of exposure of sectors to ML.

116. In general, the FIA demonstrated a good understanding of ML risks as well beyond the NRA. The FIA uses this understanding in their daily work, i.e. when carrying out operational analysis or supervision. The San Marino authorities demonstrated also the ability to identify, understand and mitigate the ML risk outside of the NRA exercise. In addition, the FIA showed a good understanding of newly emerging risks, e.g. a ML risk in relation to the Covid-19 pandemic. The FIA promptly reacted to this by issuing guidelines and providing outreach to the private sector.

117. The LEAs demonstrated a good understanding of threats, vulnerabilities and risk identified and assessed in the 2019 NRA. Nevertheless, the representatives of the FIA, LEAs and Investigating Judges during the interviews demonstrated a mixed understanding of the ML risk presented to San Marino which bears the characteristics and features of regional financial centre, i.e. the risk of San Marino being used in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions (see IO.7). The AT is of the view that the reason for this mixed understanding is the lack of strategic analysis of such ML schemes (see IO.6).

118. In addition to the NRAs, the FIA had carried out strategic analysis on the use of cash, on NPOs and TF which have been used to enhance risk understanding by the competent authorities. These reports had a positive impact on ML/TF risk understanding and application of risk-based measures by the FIA and the OCA. For example, based on the 2019 NRA and the strategic report on the use of cash, San Marino had analysed risks related to cash and the quality of cross-border cash controls (see IO.8 for figures) and concluded that cash does not pose a significant risk. At the same time, during the interviews the LEAs were not able to explain how cash can be used to launder money (see IO.7).

119. As for another supervisory body in San Marino, i.e. the CBSM, which carries out prudential supervision, demonstrated that its understanding of risks is confined to the 2019 NRA and its prudential functions (see IO.3). In addition, the CBSM was able to demonstrate its response to a risk that had emerged from the Mazzini case. In particular, as senior management of FIs was involved in this case, the CBSM responded promptly by introducing amendments to legal provisions and enhancing fit and proper requirements. The efficiency of these measures is analysed under IO.3 (market entry).

TF Risk

120. All Sammarinese authorities demonstrated a very good understanding of TF risks. Acts of terrorism have never taken place within Sammarinese borders. San Marino considers overall TF risk as low given the low level of TF threat and vulnerabilities. The recent 2019 NRA assesses TF risks in a very comprehensive manner, the results of which serve as a basis for its risk understanding. The competent authorities understanding was not only based on the 2019 NRA, but also on other relevant reports, e.g. reports on cash, TF and NPOs. In general, the AT is satisfied with how San Marino assessed its TF risks and formed its conclusions and views.

121. The TF risk analysis is based on different variables, i.e. contains an analysis of financial flows, a cash study conducted by San Marino between 2010 and 2018, statistics related to a set of “identified jurisdictions” and countries from the MENA region. In addition, the TF analysis considers

reports on current trends and activities authored by other organisations (Italian Institute for International Political Studies-ISPI, Europol, FATF).

122. The 2019 NRA acknowledges that for small countries the exposure to TF arises from their high level of cross border business. San Marino provided statistics showing volume of incoming financial flows from cross border business with specific jurisdictions, which were identified for the purpose of the analysis. These incoming and outgoing financial flows in relation to the “identified jurisdictions” and countries from the MENA region have been compared with data related to the import/export with the aim of detecting inconsistencies/gaps. This exercise was aimed at verifying whether the level of TF risk assigned by banks to customers was consistent with their transactions and whether banks have developed and applied appropriate internal controls to adequately mitigate those risks. As a result, in general the level of TF risk assigned to customers was found in line with costumers’ transactions and their profiles did not contain terrorism and TF (T/TF) elements.

123. The authorities explained that the TF threat assessment was based on several factors: the absence of T/TF investigations and prosecutions in San Marino as well as there being no MLA or extraditions related to terrorism or its financing; the absence of domestic cross-cutting crimes which contain T/TF elements; the limited incidence of cross border business; the absence of T/TF elements emerging from territorial controls and proactive investigations by the Gendarmerie; the lack of evidence related to forms of extremism including those expressed on the internet; the increasing understanding of T/TF by FIs, which is reflected by the increasing quality and quantity of STRs; the results of the drilldown analysis conducted on financial flows. When assessing the TF threat, the San Marino authorities also considered data and information on Italian TF threats, such as a very significant threat of religious terrorism, the proximity of Libya’s borders and the presence of the Holy See in Italy. The FIA and the CBSM also conducted a cash transaction study, in order to detect any relevant cross border activities related to non – resident customers. As a result, no significant violation related to cross-border declarations could be detected. Information from EROPOL on European TF threats and from the FATF on international TF risks were considered as well. The San Marino authorities also highlighted that there are no T/TF evidence linked to foreigners seeking residency permits coming from countries in which ISIL is still operational.

124. The TF vulnerabilities assessment was supported by a strong political commitment, recent legislative measures, the criminalisation of TF offences and related ancillary offences according to international standards, the introduction of the fundamental building blocks of the preventive measures on TFSs into the San Marino AML/CFT framework, increased awareness and understanding of TF risk by the authorities and the private sector (including NPOs), the good quality of intelligence; the adequacy of resources dedicated to the prevention of T/TF, the absence of suspicious financial flows coming in/out San Marino related to jurisdictions that support terrorism and its financing and high risk countries. Even though not mentioned in the written report, the San Marino authorities claim that the TF risk assessment also takes into consideration the same vulnerabilities as the ML vulnerabilities, such as the “National TF Combatting Ability”, the “Integrity” and “The CFT Knowledge And The Integrity Of The Staff” and “The Effectiveness Of The Compliance Function”. The TF analysis briefly considers the vulnerabilities of specific products, services and sectors.

VASP sector and misuse of legal persons

125. There are two areas which are not fully assessed and analysed by the Sammarinese authorities, i.e. the VASP sector and the misuse of legal persons. As noted in the TC Annex under R.15 San Marino has not yet identified and assessed the ML/TF risks emerging from VA activities and the activities or operations of VASPs. However, authorities have taken steps to implement relevant legislation and establish necessary cooperation among competent authorities. Despite of these efforts taken by San Marino, ultimately it could not be said that the understanding of the competent authorities was fully demonstrated because there was no relevant risk assessment.

126. Even though San Marino did not conduct a comprehensive risk assessment of all types of legal persons, the authorities were able to demonstrate an adequate understanding of how legal persons might be abused for ML/TF (see also IO.5).

2.2.2. National policies to address identified ML/TF risks

127. Based on the ML/TF risks identified in the 2019 NRA San Marino has adopted an AML/CFT Action Plan and a National AML/CFT Strategy for 2020 - 2022.

128. The National AML/CFT Strategy for 2020 – 2022 was approved by the State Congress on 14 July 2020. The primary goal of the national strategy is to identify strategic objectives and the relevant actions to be adopted by the authorities, public offices and other bodies in collaboration with the private sector. The AML/CFT Action Plan and the National AML/CFT Strategy for 2020 – 2022 address the risks identified by the NRA to a large extent.

129. The National AML/CFT Strategy identifies four strategic objectives, which are related to: (1) updating the current AML/CFT legislation (2) enhancing the risk understanding and mitigation, (3) detecting and reporting of ML/TF and (4) improving the implementation of measures. In order to implement these strategic objectives, 13 action items were developed and prioritised as high priority, medium priority or other action. The overall implementation of each strategic objective is achieved by 3-4 action items of different priority level. The details of the implementation, including deadlines are outlined in the Action Plan in the Annex to the National AML/CFT Strategy, which also directly links the strategic objectives and action items to the 2019 NRA.

130. The National AML/CFT Action Plan identifies a primary and secondary agency responsible for the implementation of each action item, defines key actions and sets implementation deadlines for each action item. Priorities in the activities, involvement of the authorities and private sector are defined in the National AML/CFT Action Plan as well as in the National AML/CFT Strategy.

131. The human resources of LEAs and the CBSM (Anti-fraud squad, Gendarmerie, Fortress Guard, Interforce Group and Interpol Office) dedicated to the fight against ML/TF are proportionate to the size of San Marino and seem to be adequate to the ML/TF risks. The LEAs attend AML/CFT related training activities. As for the allocation of resources to the FIA, the policy documents are silent on this. Considering the FIA's central role in the Sammarinese AML/CFT system and the volume of work carried out by them, i.e. operational and supervisory activities, the AT is of the view that lack of additional allocation of resources to the FIA might impede the implementation of measures to manage and mitigate the risks. The AT has identified some areas where additional human resources are required (e.g. for conducting strategic analysis of complex ML cases and supervision – see IO.3 and IO.6).

132. Following the adoption of the 2019 NRA (even though there is no risk assessment of VASPs), VASPs became subject to the AML/CFT Law. The VASP sector is currently not material for San Marino, however the authorities have already taken measures to implement relevant legislation and establish necessary cooperation among competent authorities (please see R.15).

133. In general, the AT is of the view that the identified ML/TF risks are addressed to a large extent by the National AML/CFT Strategy and the National AML/CFT Action Plan. Due to the recent adoption of National AML/CFT Strategy it was not possible for the AT to fully assess the effectiveness of the strategy. Apart from the newly adopted policy documents, the AT also assessed the outcome of the previous National AML/CFT Strategy and relevant Action Plan.

134. The previous National AML Strategy and National AML Action Plan were adopted for the period of 2016 – 2018 to address the findings of the 2015 NRA, which only focused on ML risks. The San Marino authorities demonstrated to the AT that the majority of the relevant Action Plan items were completed in 2018, e.g. the establishment of the CRM, the development of strategic analysis by the FIA and the issuance of guidance on the RBA by the FIA. It should be noted that these policy documents did not foresee any allocation of resources. Nevertheless, in practice additional resources

have been allocated to the FIA due to additional functions (e.g. conducting strategic analysis and enhancement of supervisory activities).

135. Moreover, San Marino introduced CDD obligations for accountants, auditors, lawyers and notaries, in order to bring San Marino's AML/CFT regime in line with FATF Recommendation 22. Implementing such obligations helped San Marino mitigate some risks emerging from the 2015 NRA, mostly in relation to domestic corruption. The other example provided by the authorities is the adoption of legal requirements to conclude a public deed or authenticated private agreement to facilitate the tracing of the payments related to the transfer of real estate or company shareholdings. In this case lawyers and notaries shall obtain a specific declaration with an analytical indication of how the price/share was paid, according to the specific instructions given by the Agency. This is a specific action taken in order to mitigate the risk in relation to a relevant ML *modus operandi*.

136. Even though the 2015 NRA was only assessing the ML risks, San Marino also addressed the TF issues. In particular, in July 2016 a Working Group was established and mandated with the task of developing a two part document containing the National Security Plan in the field of CFT (Part 1 - confidential), which includes the CT Strategy (Part 2 - non-confidential). According to Law 21/2019 the Working Group was transferred into the permanent Anti-Terrorism Committee in 2019. In the context of TF and PF, the Congress of State has also adopted Law on "*Measures for preventing, combating and suppressing terrorist financing, the financing of the proliferation of weapons of mass destruction and the activity of countries that threaten international peace and security*". In addition, the actions undertaken by San Marino are supported by the national CT Strategy (see IO.9).

2.2.3. Exemptions, enhanced and simplified measures

137. No exemptions or SCDD based on the NRA or other risk assessments are currently applied in San Marino in practice.

138. San Marino's AML/CFT Law allows application of exemptions of CDD measures in certain specific cases, if the specific ML/TF risk has been identified as "low" by the NRA or a specific risk assessment. This applies to entities performing low-risk financial activities and electronic money providers.

139. With respect to electronic money the 2019 NRA provides quantitative data for the period of 2013 to 2018 showing that the overall number of rechargeable prepaid credit cards issued by banks increased (with the most significant increases in 2015 and 2018), the number of prepaid cards issued to PEPs increased, while the average size of prepaid card transactions constantly decreased over the same period. The 2019 NRA does not further elaborate on the ML/TF risk of electronic money providers nor is there a specific risk assessment demonstrating a low risk. Consequently, no exemptions under AML/CFT Law were granted to date and therefore CDD measures are always applied for electronic money issued by electronic money providers in San Marino.

140. The 2019 NRA did not assess low-risk financial activities and no exemptions are being applied in that regard.

141. During the interviews held with the representatives of the private sector, the AT was provided with information on enhanced measures applied by the OEs based on the self-assessments according to the AML/CFT Law in line with the risk variables provided by the FIA and the NRA. Accordingly, the client risk profiles of the OEs were adjusted and enhanced risk mitigating measures applied (e.g. in relation to clients of the sector of disposal of trash given the high ML risk posed by predicted offences, such misappropriation of funds, bankruptcy, bad faith administration in the sector. No specific examples were provided in relation to simplified measures. The FIA received copies of self-assessments of all FIs and of some DNFBPs. The analysis of the FI's self-assessments confirmed that FIs make use of the NRA results and the FIA guidelines on self-assessments when drafting the methodology of self-assessments.

2.2.4. Objectives and activities of competent authorities

142. The activities and objectives of the competent authorities (i.e. the FIA, investigating judge, the CBSM and the LEAs) are to a large extent consistent with the national AML/CFT Strategy and identified risks.

143. The National AML/CFT Strategy represents a high political commitment to implement a more effective AML/CFT system. The results of the NRA have been scrutinised by competent authorities in order to determine the activities to mitigate and address vulnerabilities and to tackle to the largest extent threats analysed and risks identified.

144. The main policy objectives are outlined in the National AML/CFT Strategy and the AML/CFT Action Plan on the basis of the results of the NRA. San Marino provided information on the level of identified priorities and the actions taken since the adoption on the 2020-2022 AML/CFT National Strategy in relation to “High” and “Medium High” priorities.

145. The activities of competent authorities are generally guided by these two policy documents by way of implementing the AML/CFT Action Plan items, which correspond to the policy objectives of the National AML/CFT Strategy. The activities of the competent authorities are therefore consistent with these two documents and identified risks. In particular, this can be seen under different parts of the report, e.g. international cooperation on foreign predicate offences, RBS of the FIA and other activities.

146. The objectives of competent authorities in relation to the evolving national policies and risks are exclusively determined by reference to the strategic objectives and action items of the National AML/CFT Strategy and the Action Plan and are therefore consistent with these two documents. In practice, the Department of Finance and Budget monitors the objectives of the competent authorities for their consistency with the identified ML/TF risks (legal obligation derives from the AML/CFT Law). Nevertheless, as noted under IO.7 there is still room for some improvement, i.e. two areas require further emphasis: how to address the risks of ML in San Marino of the laundering of the widest range of foreign predicates; the need to actively promote proactive parallel ML investigations into predicate domestic criminality as a policy objective (see IO.7).

147. Both the CT Strategy and the National Confiscation Strategy 2019 generally appear to be in line with the risks identified 2019 NRA and the evolving policies depicted by the National AML/CFT Strategy 2020 – 2022.

148. Even though there are no specific policy documents to tackle organised crime and corruption, in practice San Marino pays attention to these issues. For example, San Marino being member of GRECO brings its objectives in line with risks identified and amends anti-corruption legislation in line with GRECO recommendations. San Marino’s progress was acknowledged several times by GRECO.

149. With respect to fighting the organised crime, San Marino had signed several agreements with Italy to enhance their cooperation on combating this threat.

150. Moreover, San Marino has provided to the AT several examples of how the authorities are able to formulate policy responses in order to bring their objectives and activities in line with newly emerging risks outside the framework of the NRA. E.g. response of the authorities to risk posed by virtual currencies, in July 2020 the TCNC discussed the challenges, good practices and policy responses to the new threats and vulnerabilities related to ML and TF arising from the COVID-19 crisis.

2.2.5. National coordination and cooperation

151. National AML/CFT policies are determined by the CSC and ultimately the Congress of State (Government of San Marino). The CSC is informed and assisted by the TCNC, which by itself is composed of highest-level and high-level representatives of competent AML/CFT authorities. The

TCNC is the main body in charge of co-operating and co-ordinating AML/CFT policies. The TCNC, is composed of representatives of the main public authorities: the JA, the CBSM (acting in its capacity as the AML/CFT supervisory authority), the FIA and LEAs and can involve also representatives of the private sector and other representatives of public administration offices in order to discuss issues of their possible interest. The TCNC is chaired by the JA and meets on a regular basis. In practice in the last 2 years the TCNC met in average in a bi-weekly interval. There are no internal rules of procedure governing the work of the TCNC, its competences and voting/decision making procedures. The TCNC usually meets upon request of the chairwoman or upon request of its members. Agenda and meeting dates are agreed upon by e-mail correspondence, minutes of the meetings are kept. The mandate of the TCNC is not to take regulatory decisions but to provide a coordination and cooperation platform for all AML/CFT authorities. The TCNC reports its discussions and recommendations to the CSC and to the Congress of State to take further action. These recommendations include the drafting of legislative proposals by the TCNC members or recommendations regarding the signature or ratification of international conventions.

152. In addition, in 2019 the CRM was established and vested with the main coordination function for TFS in relation TF and PF. CMR is composed of the Director of the Foreign Affairs Department (CMR chairman), the Director of the Department of Institutional Affairs and Justice, the Director of the Department of Finance and Budget, the Commanders of the Police Forces, the Director of the NCB Interpol and of the ARO and the Director of the FIA. The CMR is obliged to meet at least once per calendar year. In practice, CMR meetings are not held as regularly as TCNC meetings.

153. The CRM co-ordinates all measures necessary to implement international financial sanctions to counter terrorist financing and the financing of proliferation of mass destruction. The rules of the procedure governing the CRM are contained in the Internal Regulation adopted by the CRM itself, pursuant to paragraph 2 of Art. 3 of Law 57/2019. CRM decisions are adopted by the majority of its members.

154. There is no hierarchical relation between the CRM and the TCNC. The CRM shall collaborate with the TCNC and can invite representatives of other authorities, officials of the public administration, as well as members of the TCNC, to participate in the meetings without voting rights. One practical example of such cooperation is to be found in Case 2 under Chapter 4 (analysis of IO.10).

155. In addition, a working group to combat the proliferation of weapons of mass destruction (WMD) and their financing was established in 2019. This working group acts in synergy with the TCNC and is composed of representatives of the Department of Foreign Affairs, the Department of Finance and Budget (with a coordinating role), Fortress Guards, FIA, OCA, Tax Office, CBSM.

156. From the operational perspective, national cooperation is legally binding based on Chapter II of the AML/CFT Law. At an operational level, the competent authorities have signed MoUs with the aim of enhancing cooperation and exchanging relevant information. In particular, the FIA has signed MoUs with LEAs and the CBSM, OCA and CLO. Formal cooperation procedures do not impede authorities from providing informally assistance whenever necessary.

2.2.6. Private sector's awareness of risks

157. Public versions of the 2015 NRA and the 2019 NRA are available to all OEs on the FIA's website. In addition, the FIA disseminates periodic newsletters to FIs, Professionals, LEAs and public administration offices about international publications, national legislation, trend and typologies in order to raise the awareness of the private sector and provide updated risk information. Moreover, the FIA issued publications regarding TF, PF and the possible misuse of NPOs in order to increase the private sector's knowledge. The FIA also organised a specific training on the NRA results and outreach activities in form of an ad-hoc meeting with the major representatives of the insurance and reinsurance sector.

158. The private sector was widely involved in the 2015 NRA exercise and on a slightly less intensive level in the 2019 NRA. Regular internal training courses are provided, and external training activities organised by the FIA are attended by private sector representatives.

Overall conclusions on IO.1

159. The AT is of the view that IO.1 is achieved to a large extent by San Marino and moderate improvements are needed.

160. San Marino has made significant efforts to enhance its understanding of main ML/TF risks. As a result, the FIA and the LEAs demonstrated a good understanding of ML/TF risks identified in the 2019 NRA.. However, the FIA, LEAs and Investigating Judges demonstrated a mixed understanding of the ML risk presented to San Marino which bears the characteristics and features of a regional financial centre, i.e. how San Marino might be used as one of several jurisdictions in complex ML schemes. In the view of the AT this is due to a lack of strategic analysis of complex ML schemes.

161. In addition, the LEAs were not fully conversant with the range of ways in which cash can be used to launder money. However, in the view of the authorities, cash does not pose a significant ML risk at present. Reduction in the use of cash is also supported by a study carried out by the CBSM and the FIA.

162. The CBSM understanding of ML/TF risks is confined to its operational activities (prudential supervision and market entry). In this respect this deficiency was not provided with a significant weighting. The 2015 and 2019 NRAs do not analyse some important areas, such as the ML/TF risk related to legal persons and VASPs. Despite the fact, that San Marino has not assessed the ML/TF risks related to legal persons, generally an adequate understanding was demonstrated of how legal persons might be misused for ML. The VASP sector is currently not material for San Marino, however the authorities have already taken measures to implement relevant legislation and establish necessary cooperation among competent authorities (please see R.15).

163. There is a strong political commitment of San Marino's government for the national ML/TF risk assessment process and the adoption of a National AML/CFT Strategy. The objectives and activities of San Marino's authorities are broadly in line with the NRA and the National AML/CFT Strategy, due to the fact that they are defined and formulated by these documents. Nevertheless, there is room for improvement as noted under IO7.

164. The Sammarinese legislation provides for the possibility to apply exemptions, which is not fully supported by the NRA or other relevant reports. Nevertheless, no exemptions or SCDD are currently applied in San Marino in practice.

165. San Marino has achieved a substantial level of effectiveness for IO.1.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

10.6

- 1) Law enforcement agencies have direct access to a wide range of financial intelligence and other relevant information, which is used to a certain extent to develop evidence and trace criminal proceeds. The Investigating Judges interact actively with the FIA to develop evidence and trace criminal proceeds.
- 2) In general, the quality of STRs is rather good however the number of STRs in relation to complex ML schemes remains low. Banks account for the vast majority of STRs which is in line with exposure of the sector to risks. Some material DNFBPs submit a low number of STRs (see IO.4) thus impeding the quality of financial intelligence. Seven TF STRs have been submitted which is in line with the risk profile of San Marino. Cash and BNIs reports have never triggered any ML investigation.
- 3) The FIA is reasonably well equipped (IT tools and software) and structured (premises and units created within) to perform its core functions. The FIA's financial analysis and dissemination support the operational needs of the JA to a large extent and relevant LEAs to some extent.
- 4) With respect to operational analysis San Marino was only able to provide only few examples of complex ML cases. Moreover, there is no meaningful outreach in this regard and strategic analysis of trends and patterns on whether San Marino is used as a transit jurisdiction through which to pass laundered property. Inadequate number of human resources impedes the effectiveness of the FIA. Lack of strategic analysis of potential transit nature of San Marino also has a negative impact on the LEAs' and Investigating Judges' understanding of how such cases can be investigated and their understanding of ML/TF risks (see IO.1 and IO.7).
- 5) The size of the jurisdiction allows prompt information exchange and consultation among the FIA, Investigating Judges, 3 Police Forces (Gendarmerie, Civil Police/Antifraud Squad, Fortress Guard), the supervision department of the CBSM, NCB Interpol and the ARO. Such cooperation among competent authorities supports their needs to a large extent. The exchange of information is carried out according to specific requirements to protect the confidentiality of such data.

10.7

- 1) San Marino's legal framework enables the effective investigation and prosecution of the different types of ML. San Marino routinely detects, investigates and prosecutes both self and third-party ML and achieves convictions in standalone ML prosecutions. However, understanding of the JA and the LEAs is lacking in respect of the investigation and prosecution of complex ML, in particular where there is a risk of San Marino being used in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions.
- 2) In ML cases involving foreign predicates, the deciding judges are able to draw inferences based on objective factual circumstances – the evidence of those factual circumstances often being obtained by international cooperation.
- 3) Given the small size of the jurisdiction and provided statistics for 2015 to 2019 inclusively, the number of ML investigations and ML prosecutions commenced and the number of

convictions achieved support the authorities' contention that the investigation and prosecution of ML is both prioritised and effective. Most of the ML convictions involve the ML of foreign predicates and most of these predicates are recorded as committed in Italy. All but two of the ML prosecutions were standalone ML prosecutions.

- 4) Where there are significant cases of domestic proceeds generating crime or domestic corruption, there are examples where parallel financial investigations have been conducted. ML convictions were achieved in a substantial case of this type but these convictions are the subject of an appeal which has yet to be determined.²⁵ The types of ML activity investigated and prosecuted are therefore broadly consistent with San Marino's threats and risk profile and AML policies. However, ML investigations conducted in parallel to investigations into predicate criminality do not seem to be being conducted as regularly or successfully as might be expected.
- 5) The investigation and prosecution of ML is adequately resourced by the number of Investigating Judges, judicial police and clerks. Such cases are managed effectively and often a ML conviction is achieved in San Marino before the trial of the predicate offence abroad which is, in almost all cases, Italy.
- 6) Where ML convictions are achieved, sentences are passed which (if served) would be considered to be effective, proportionate and dissuasive. There are however significant difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them. The extradition process is not completed because there is insufficient prison capacity to accommodate all sentenced prisoners. If custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime.
- 7) So far as legal persons are concerned, for relatively large companies the scale of fines it is possible to impose could not be said to be sufficient to be proportionate or dissuasive.

10.8

- 1) San Marino has a comprehensive legal framework on seizures and confiscation. It provides adequate legislative tools for the detection, seizure and confiscation of instrumentalities and proceeds of crime, both for domestic and international criminal cases.
- 2) The confiscation of criminal proceeds is pursued as a policy objective although some improvements such as for instance the creation of a specific asset management authority or entity, that could be located within an existing institution, could be envisaged. The outcome of the authorities' actions (both in terms of quantity than quality) in this field are in line with the country's context and risks.
- 3) The courts routinely order the confiscation of assets previously seized (both proceeds and instrumentalities of crime) over the course of a criminal investigation. There have also been cases of non-conviction based confiscations.
- 4) San Marino requests the repatriation of assets seized abroad. No request to recognise a confiscation judgment from abroad has been received during the period under review.
- 1) The number of controls regarding the cross-border movements of cash is relatively high and seems to be adapted to the country's current situation. The authorities in charge of the detection of cash could however benefit from additional investigative means. Few violations

²⁵ In the *Conto Mazzini or Sammarinese Tangentopoli* case 27 defendants were prosecuted for ML (the proceeds laundered derived from corruption). The convictions are the subject of appeals which remain to be determined.

of the law on transborder cash transport were detected, which seems to confirm the authorities' assessment that less cash is transported in and out of the jurisdiction.

- 2) The confiscation results do generally reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities.

Recommended Actions

IO.6

- 1) San Marino should ensure that the FIA is adequately resourced to enable it to function more efficiently and effectively with regard to strategic analysis, highlighting specific trends and patterns on whether San Marino is used as a transit jurisdiction through which to pass laundered property.
- 2) The FIA should consider formal mechanisms for sharing information on its operational and strategic analysis beyond the authorities which are the direct recipient of disseminated STRs with the aim of increasing operational exchange of information, including receiving feedbacks from competent authorities on the use of shared information.

IO.7

- 1) The JA and the LEAs should undergo further training in respect of the investigation and prosecution of complex ML, in particular where there is a risk of San Marino being used in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions.
- 2) San Marino should establish and apply a criminal justice policy on investigating and prosecuting ML setting out the circumstances in which ML investigations should be commenced and the principles and criteria by which different types of ML investigations should be prioritised. This policy document should consider the risks of ML in San Marino of the laundering of the widest range of foreign predicates and provide a plan in respect of how those risks be addressed. It should also actively promote proactive parallel ML investigations as a policy objective and setting out how that objective may be realised.
- 3) San Marino should define the parameters and principles as to which LEAs would be likely to be deployed on and apportioned to what types of ML investigations and enhance the specialisation of those involved.
- 4) San Marino should strengthen the sanctions available to be imposed on legal persons.
- 5) For sanctions of natural persons to function coherently, San Marino should find a solution for the lack of prison capacity (whether by building more capacity or by making bilateral agreements with other jurisdictions to allow for the serving of a sentence imposed in San Marino in that other jurisdiction). In the absence of any such bilateral agreement, if a custodial sentence is imposed on a convicted person who is outside the jurisdiction, there needs to be effective extradition of that person so that any sentence imposed is served.

IO.8

- 1) San Marino should consider enhancing the existing mechanism or setting up an authority or entity charged with the management and realization of seized and confiscated assets, authority or entity that could be set-up within an existing institution (given the size of the jurisdiction).
- 2) San Marino should continue to pursue the confiscation of criminal assets as a policy objective and pursue the repatriation of assets located abroad among other means through the further conclusion of asset sharing agreements with relevant jurisdictions.

3) San Marino should keep the controls of cross-border cash movements at its current high level and consider the acquisition of additional cash detection tools such as specialised K9 units.

166. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

3.2.1. Use of financial intelligence and other information

167. The FIA has direct access to a wide range of information and databases as described in Table 7, the information on domestic criminal activities in relevant register²⁶ and data maintained by the LEAs is accessible only upon written request. Despite the lack of direct access to these databases the FIA can still obtain this information in a timely manner, i.e. within a matter of hours, this was confirmed during the interviews with different stakeholders.

Table 7: Non-exhaustive list of sources of financial intelligence and other types of information used by the FIA:

FIA's database is the primary repository of financial intelligence, developed on the basis of STR's received from OEs and information the FIA can get access to directly (e.g. number of government and private databases, tax information etc.).
Government databases , which include information on real estates, companies, BOs, mortgages, agreements, vehicles, residents, managers and shareholders of FIs register, tax.
Commercial, legal, business databases Cerved, Innolva/Tinexta (include Italian business enterprises and real estate information), World Check, SGR Compliance Daily Control (adverse media information databases) and open source.

168. Other sources of information that the FIA uses to produce financial intelligence are submitted STRs and financial information requested from OEs. Additional requests sent to OEs are executed within a week, in case of urgency such FIA's requests can be executed in hours.

169. In addition, the FIA actively uses international cooperation (see IO.2) to produce financial intelligence. Such information is mostly requested through the Egmont Group (50 times per year on average) and sometimes through Interpol or the JA to obtain criminal certificates and information on convictions from Italian Courts. The FIA demonstrated a few good examples of successful cooperation with foreign FIUs in the development of financial intelligence that transformed in effective output to the JA (Investigating Judge). This international cooperation is in line with the risk profile of the country as noted in Chapter 1 since most of the ML cases involve the laundering of foreign predicates.

170. The LEAs access a wide range of sources of financial intelligence and other relevant information that is frequently used to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF.

²⁶ FIA has requested information from this register 36 times that constitutes the most intensively used indirectly accessible database.

171. The LEAs have access either directly or upon request to a wide variety of databases as shown in Table 8. Although there are several databases to which the LEAs have indirect access, this does not impede the efficiency of the LEAs' use of other relevant information. The interviews with representatives of different LEAs confirmed that even though LEAs may have to request relevant data, such information is provided to them in a timely manner. The Sammarinese authorities also informed the AT that they are working on expanding direct access to all possible databases.

Table 8: Source of information that the LEAs have access

Database	Type	LEA	access mode
Vehicles register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
San Marino driving licenses register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Italy driving licenses register	Foreign public administration	Civil Police, Fortress Guard	indirect (upon request)
Real estate register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Company register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Register of mortgages	Public administration	Civil Police, Gendarmerie	direct (on-line) access
Register of agreements	Public administration	Civil Police, Gendarmerie	direct (on-line) access
Register of real estate renting and leasing contracts	Public administration	Civil Police, Gendarmerie	direct (on-line) access
Register of vehicles renting and leasing contracts	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Register of the population (i.e. Stato Civile)	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Identity Documents database (IDIS)	Public administration	Gendarmerie	direct (on-line) access
Labor office database	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Tax office (direct and indirect taxes) databases	Public administration	Civil Police, Gendarmerie	direct (on-line) access
Beneficial owner register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Economic activities (licenses) register	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Debtors Register (list of subjects with unpaid debts against public administration)	Public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Smac (retail transactions) register	Public administration	Civil Police Fortress Guard, Gendarmerie	direct (on-line) access indirect (upon request)
Telemaco (Italy business enterprises and European Business Register)	Private	Civil Police, Gendarmerie	direct (on-line) access
World Check (adverse media)	Private	Gendarmerie	direct (on-line) access
Court database for criminal information	Court	Civil Police, Fortress Guard	indirect (upon request)

		Gendarmerie	direct (on-line) access
Aircraft registry	Maritime Navigation Authority	Civil Police, Gendarmerie	indirect (upon request)
Maritime registry	Maritime Navigation Authority	Civil Police, Gendarmerie	indirect (upon request)
Trusts register (in particular beneficial ownership info)	CBSM	Civil Police, Gendarmerie	indirect (upon request)
Office for Control Activities information	OCA (former OCSEA)	Civil Police, Fortress Guard, Gendarmerie	indirect (upon request)
The CLO databases	CLO	Civil Police, Fortress Guard, Gendarmerie	indirect (upon request)
ANIA (Italy and San Marino insurance vehicles register)	Private	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
ACI (Italy vehicles register)	Foreign public administration	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
Verbatel (central register of checks performed by all the LEAs)	Police forces	Civil Police, Fortress Guard, Gendarmerie	direct (on-line) access
“Punto a Punto” (Italian police information)	Foreign police forces	Gendarmerie	indirect (upon request)
Holiday-maker database (Genda – Web)	Police forces	Gendarmerie	direct (on-line) access
EASF/TSC Interpol database	Interpol	Gendarmerie	direct (on-line) access

172. Apart from access to different databases, the LEAs also have access (upon request or spontaneously) to financial intelligence produced by the FIA. The LEAs can obtain financial information from OEs directly or through the FIA. If information is accessed directly a specific order by the JA (Investigating Judge) is needed (see c.31.3). In practice if the requested information is available in the FIA database, then such data is provided within 1 or 2 days. If the information needs to be requested from the OEs, then such data is provided to the LEAs within a week.

173. All competent authorities (the Civil Police/Anti-Fraud Squad, Investigating Judges, the Gendarmerie, the Fortress Guard) combating ML and TF confirmed that they are using financial intelligence and other relevant information to a certain extent to develop evidence related to ML and predicate offences. The JA (investigating judge) and the FIA cooperate quite actively with each other whereas direct cooperation between the FIA and the LEAs is relatively rare because of the particularities of the Sammarinese system.²⁷

²⁷ In case the FIA (as a result of its financial analysis conducted) detects facts that might constitute ML, predicate offences or TF, it disseminates its analysis and document, directly to the JA (Investigating Judges). Based on this dissemination (the FIA information can be used as evidence) the Investigating Judge can open an investigation. As highlighted under IO.7 all (open) investigations are supervised by the Investigating Judge with the LEAs support. All requests for additional information or measures are sent to the FIA by the Investigating Judge. Dissemination to the LEAs occurs when the FIA’s analysis has not detected any facts related to ML/TF or predicate offences, nevertheless this information might still be of possible interest to the LEAs for further action. Such information is used by the police forces during the pre-investigative stage. In such situations, the LEAs might directly approach the FIA for financial intelligence (see Table 9). As noted

174. The JA (Investigating Judges) requested information from the FIA 91 times. The Police authorities and NCB Interpol have approached the FIA only 27 times during the reviewed period. (see Table 9). The type of cases disseminated by the FIA to the JA correspond to the main risks identified in the 2019 NRA.

175. Regarding the use of financial intelligence by the LEAs, the Sammarinese authorities provide relevant statistics on request submitted to the FIA by different competent authorities.

Table 9: Requests for cooperation received by the FIA from domestic authorities

National authorities	2014	2015	2016	2017	2018	2019	2020*	Total
NCB Interpol	1	-	1	3	-	-	-	5
Police authorities	1	1	0	3	5	1	11	22
JA	17	20	13	9	13	14	5	91
Total	19	21	14	15	18	15	16	118

* As at 30.06.2020

176. Table 9 suggests that LEAs are not frequently using the FIA to assist them although the FIA's function is well understood. As explained in the footnote above, the LEAs only approach the FIA during the pre-investigative stage. In all other case LEAs rely on or use the Investigating Judges to interact with the FIA, i.e. during the criminal investigations (for MLA, etc.).

177. As for the Gendarmerie and Fortress Guard, there are very few examples of them using financial intelligence. For example, the Gendarmerie carried out an effective parallel financial investigation in 2 cases (in one drug trafficking was the predicate offence, in the other it was swindling/fraud). The Fortress Guard which is the third law enforcement agency empowered to investigate ML, associated predicate offences and TF and which focuses on policing the cross-border transportation of cash and similar instruments has never identified possible illicit proceeds in course of its parallel financial investigations.

178. San Marino has provided the AT with several good case examples in which financial intelligence was used.

CASE STUDY 1: Use of financial intelligence with an international element
In 2017, following to the receipt of an STR submitted by a FI (bank), the FIA carried out a financial analysis in respect of natural and legal persons located in Sweden, UAE, Malta, the Netherlands, Cayman Islands.
In order to gather further information on the foreign companies involved (including directors, shareholders, beneficial owners and the main business activity), the FIA performed first checks on commercial databases and on open sources (some adverse news was found.) They then requested the cooperation of four foreign FIUs in order to gather information on the origin of funds credited in San Marino, basic information on the originator/beneficiary accounts (holder, authorized persons, beneficial owners). Based on these checks and analyses, the FIA detected a possible ML case: i.e. the use of a San Marino account for ML purposes through the use of foreign companies.
Through international cooperation between FIUs, the FIA confirmed its suspicions. Once the FIA obtained permission to disseminate (for intelligence purposes only) the information provided by the foreign FIUs (including information on the beneficial owner), the FIA disseminated to the JA

earlier, in the course of investigation the LEAs rely on the investigating judges who request additional information.

additional reports that included also new information gathered by the FIA through the analysis of documents included in a subsequent different STR-ML obtained (upon request) from a different FI.

Based on the information disseminated by the FIA, the investigating judge started criminal proceedings against the legal representative of the reported foreign company and the person who opened the accounts at the San Marino bank. The funds (about €1 450 000) were seized in a few days.

In May 2019 the defendants were indicted with ML. The trial is pending.

CASE STUDY 2: Financial analysis performed by the FIA upon request of the JA

In 2018, the investigating judge requested the FIA to perform a (parallel) financial analysis in respect of two San Marino PEPs being investigated for corruption.

In order to thoroughly analyse the movement of the money, the investigating judge (through LEAs, i.e. Civil Police – Anti-fraud squad) provided the FIA with all the related documentation (including account statements) obtained by banks and other FIs (fiduciary companies and insurance companies). The investigating judge also requested the FIA to gather directly additional information, if needed, from banks and other FIs.

Based on such documentation, the FIA performed a financial analysis of 73 accounts. The FIA also provided the investigating judge with information on real estate purchases (both in San Marino and abroad) and on the ownership of a boat with a San Marino flag. In order to obtain this information, the FIA accessed public administration databases and other foreign providers.

The first report disseminated to the Investigating Judge consisted of 46 pages of financial analysis and 1642 pages of attached supporting documents. Considering the complexity of the case, the aforementioned analysis was supported by two flow charts representing the financial transactions analyzed.

The FIA disseminated an additional report concerning information on the “final” use of the (alleged) illicit proceeds. Based on these reports disseminated by the FIA, the two San Marino PEPs were prosecuted for ML (from the predicates being crimes against the public administration). Illicit proceeds identified amounted to about €2 300 000.

To date, the case is awaiting trial and €1 856 391 have been seized.

179. As noted under IO.1 the AT shares the view that the TF risk is low for San Marino. During the reviewed period the FIA received seven TF STRs which is in line with the country’s risk profile. The FIA informed the assessors that in depth analysis had been carried out and no elements of suspected TF emerged. Due to this no financial intelligence was submitted to the LEAs for further action.

3.2.2. STRs received and requested by competent authorities

180. San Marino has taken steps in recent years to enhance the efficiency of its STR reporting by providing outreach to the private sector. Most of the STRs are sent by FIs. Some material DNFBP sectors submit either low numbers of STRs or no STRs at all to the FIA (see IO.4). As a result, there is insufficient provision and use of financial intelligence in relation to those sectors.

181. The FIA is the central national authority for the receipt of STRs, objective reports and cross-border declarations. The total number of STRs submitted by OEs is provided in Table 10.

Table 10: number of STRs submitted by different sectors

OEs		2014	2015	2016	2017	2018	2019	2020*	Total
financial parties	Banks	105	155	129	75	78	101	46	689
	CBSM (as bank)	0	1	1	0	3	5	1	11
	financial/fiduciary companies (other FIs)	44	39	12	8	4	5	3	115
	life insurance companies	3	11	24	15	13	8	4	78
	asset management companies	1	2	1	1	1	0	0	6
	payment institutions	0	0	0	5	5	12	1	23
	insurance and reinsurance intermediaries	0	0	1	0	1	1	0	3
professionals	Accountants	6	5	10	17	9	8	6	61
	lawyers/notaries	2	4	7	2	4	5	2	26
non-financial parties	service companies that support the professional services provided by professionals	2	0	0	2	1	0	0	5
	REAs	0	1	0	0	0	0	0	1
	providers of services related to games of chance and gaming houses	0	0	0	0	0	2	4	6
	custody and transport of cash, securities or values	0	0	0	0	1	1	0	2
	dealers in precious stones/metals	2	0	0	0	0	0	0	2
Total		165	218	185	125	120	148	67	1 028
Others		2014	2015	2016	2017	2018	2019	2020*	Total
Others ex Art. 37 AML/CFT Law		0	2	8	8	7	3	3	31
Total		0	2	8	8	7	3	3	31
*As at 30.06.2020									

STRs

182. There was a significant increase in the number of STRs in 2015 due to the adoption of Italy's VTC programme. This led to an increased focus by OEs on transactions. Because of the increase in the number of STRs submitted by OEs, the FIA was able to disseminate cases to the JA and to intensify cooperation between the FIA and the Italian Financial Intelligence Unit.

183. The decline in the number of STRs submitted over the review period, (as can be seen from the provided figures) was attributed by the Sammarinese authorities to corresponding declines in the number of FIs operating, the number of their customers and the amounts of assets under deposit. In particular, the number of the major OEs (banks and other FIs) began to decrease from 2008 (when FIs comprised 12 banks and 60 other FIs). As of 30 June 2020, there are 5 banks (one of which is not

operational) and only 3 financial/fiduciary companies, 2 insurance companies, 3 asset management companies and one payment institution authorised to operate in San Marino. Moreover, the number of banking (and other FIs) customers and the value of their deposits has markedly decreased: today, the value of these deposits is 40% of what it was in 2008.

184. As can be seen from Table 10, 67% of STRs are filed by banks and the FIA considers them to be of good quality. Considering that the banking sector is the most material, this is in line with the level of exposure of the sector to ML and TF. With respect to other FIs, the number of STRs submitted seems to be low. Although this might be commensurate with the declining size of the business overall, it might not be fully in line with the materiality of sectors. With regard to DNFBPs the reporting rates are low across all sectors. For some sectors this is not commensurate with the risks (see also IO.4).

185. The FIA provides the OEs with pre-determined criteria (see Table 11). As was noted by the FIA the main macro categories of suspicion underlining the STRs (as indicated by the OEs) are the “use of methods aimed to dissimulate the origin/destination of funds”, the “inconsistency of a subject’s assets with his/her subjective profile”, the “presence of adverse information on a subject associated with other (third) parties” and a combination of the mentioned reasons (without prevalence of any).

Table 11: Indicators of anomaly most selected by the OEs

The customer refuses or is reluctant to provide the requested information or provides false or counterfeit information or changes the information provided repeatedly or without apparent justification or provides information and documents that are not logical, or inconsistent.	25%
Operations with illogical configuration, especially if economically or financially disadvantageous for the customer, or operations that are not adequately justified by the customer through documentation relating to the operations in place or requested.	13%
Transactions that are inconsistent - also for the instruments used - with the activity carried out or with the economic, equity or financial profile of the customer or, in the case of a legal person, of the related group, if they are not adequately justified by the customer.	8%
The customer, without providing any plausible justification, adopts a completely unusual behavior with respect to that commonly held by customers.	6%
Transactions that are unusual with respect to current market practice or are carried out with methods and instruments significantly different from those used by other operators active in the same sector, especially if characterized by high complexity or by the transfer of significant amounts, if they are not justified by specific needs.	6%
The customer carries out transactions in cash of a significant amount or in unusual ways when it is known to have been subjected to criminal proceedings, to preventive measures or to seizure orders, or when it has been the subject of requests for further investigation by the authorities or notoriously contiguous (for example a family member) to subjects subjected to measures of the kind or performing such operations with counterparties known for the same circumstances.	5%
Operations requested or arranged by the customer that are not adequately justified by the customer through documentation relating to the operations in place or requested.	3%

The customer provides false or counterfeit information regarding: his own identity or that of the beneficial owner; the purpose and nature of the relationship; the activity carried out; the economic, financial and equity situation of the company or, in the case of a legal person, of the group to which it belongs; the power of representation; the identity of the signatories; the ownership or control structure.	3%
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186. Even though the authorities issued these pre-determined criteria for the OEs to assist them in determining suspicion, it should be highlighted that the OEs also send STRs which are not identified using these criteria (see also IO.4).

187. In general, the FIA conducts ongoing monitoring of the quality of received STRs and sends formal feedback to every STR received. The FIA uses “two pillars” approach to assess the quality of submitted STRs. The first approach is the evaluation of “formal” quality of STRs, i.e. the assessment of the accuracy in filling the STR as well as the completeness in providing the related attachments (i.e. documents essential for the financial analysis by the FIA). The second approach evaluates “substantial” quality of STRs, i.e. their usefulness in terms of “intelligence” information. The “substantial” quality of STRs identifies how much a report seems worthy of an in-depth operational analysis for the purpose of a possible dissemination to the JA.

188. The quality of STRs is rather good. This is supported by the FIA’s pro-active outreach (for more information please see IO.4) to the OEs to increase their awareness of the reporting requirements and to enhance the quality of STRs submitted. The FIA regularly provides various training seminars and has published for FIs and DNFBPs separately very good quality guidelines regarding their reporting obligations, that have positively impacted STR reporting. This is supported by the fact that FIA requests for additional information in response to STRs has slightly decreased however remaining relatively high.

189. FIs demonstrated a good understanding of their reporting obligations. However, the DNFBPs’ understanding varies across sectors. Some sectors submit a low number of STRs which is not commensurate with the sector specific risks (see IO.4) and this might impede the quality of financial intelligence.

190. From 2014 to 30th June 2020, the FIA has received 1028 STRs from OEs and it has opened 721 cases²⁸. The number of cases opened by the FIA compared to the overall number of STRs received appears to be good (almost 70% of STRs end up as opened cases).

191. STRs are mainly concerned with the suspicion of ML. Seven TF STRs have been submitted by OEs during the assessment period. Even though the number of TF STRs is low, this is in line with the TF risk profile of the country (see IO.1).

Cross-border declarations

192. The FIA receives cross border declarations and aggregated reports on cross border controls carried out by the Fortress Guard on a monthly basis. Information on violations concerning cross border transportation of amounts exceeding the threshold of €10 000 are sent to the FIA within the next working day.

193. As can be seen from Table 12 showing declarations received by the Fortress Guard, the number of such declarations is low. However, by looking at Table 13 on controls carried out by the Fortress Guard to identify illegal cross-border cash movements; the figures are quite impressive.

²⁸ The cases are lower than STRs only because two or more STRs may be merged in a single case, due to the fact the suspicious activities reported are connected

Table 12: Declarations on cash and BNIs

Year	Incoming flows declarations	Outgoing flows declarations	Total declarations
2014	45	1	46
2015	43	11	54
2016	28	2	30
2017	22	6	28
2018	22	10	32
2019	21	7	28
2020*	10	1	11
Total	191	38	229
* As at 30.06.2020			

Table 13: Controls on cross border transportation of cash and BNIs

Year	Controls carried out	Violations ascertained	Administrative sanctions (€)	Amounts involved (€)	Instruments seized
2014	3 803	6	4 542	89 715	1 not filled bank cheque (showing only the drawer signature)
2015	2 087	3	800	23 490	-
2016	1 938	1	570	15 700	-
2017	2 409	1	200	-	1 not filled bank cheque (showing only the drawer signature) and fake banknotes for €280
2018	1 890	2	1 566	35 659	-
2019	2 999	3	1010	38 590	-
2020*	549	-	-	-	-
Total	15 675	16	8 688	203 154	-
* as at 30.06.2020					
** Due to COVID-19 Pandemic Lockdown, cross border controls were not carried out between 1 st March and 30 th June 2020 due to the closure of the borders between San Marino and Italy					

194. It should be noted that although this information on cash and BNIs alone has not triggered a ML case during the review period, such information has been useful in several ML cases as demonstrated in the examples below (case studies 3 and 4).

CASE STUDY 3: STR on cash deposits triggering analysis by the FIA and sanctioning

In 2015, the FIA received an STR-ML submitted by a FI (bank). Between 2015 and 2016, the same FI sent to the FIA additional STRs-ML on the same matter concerning both executed and attempted transactions. The STRs dealt with the significant use of cash by a San Marino (beverage production) company.

The FIA analysed the reported financial flows and the supporting documents (invoices and sale/purchase agreements). The FIA also accessed commercial databases for further information on the company's customers (i.e. foreign companies operating in the same sector). The FIA sought

from OCSEA further information on the San Marino company and its business relationships with foreign companies. The OCSEA (through Civil Police – Anti-fraud squad) analysed accounting documents and gathered information on cash deposits. In some cases the courier received cash payments on delivery, then gave related sums to the San Marino company which deposited them in its bank account.

Given these suspicious cross-border payments, the FIA requested the Fortress Guard to intensify cross border controls and gather further information on the courier. As a consequence, the Fortress Guard conducted an administrative investigation aimed to ascertain (alleged) violations to the San Marino legislation (DD no. 74/2009) on the cross-border transportation of cash.

Based on information provided by the OCSEA and by the Fortress Guard, the FIA sanctioned the San Marino company and some of its customers for violations of “the use of cash and bearer securities” and it also sanctioned the courier's truck drivers for violations of “cross border transportation of cash and similar instruments”.

CASE STUDY 4: spontaneous disclosure from the Gendarmerie concerning an alleged undeclared cross border transportation

In 2016, the FIA received a spontaneous disclosure from the Gendarmerie concerning an alleged undeclared cross border transportation by a San Marino citizen. When the San Marino citizen was in the polling station to vote, he took his ID document from a roll of cash he held in his pocket.

Based on information gathered by the Gendarmerie, the amount in cash was equal to €25 000 (thus exceeding the threshold of €10 000) and he declared that these originated from a casino win. In fact, as also shown by the luggage in his car, the San Marino citizen had just returned to San Marino after a holiday in Eastern Europe where he had gambled at a casino (as further controls confirmed).

As a consequence, the FIA requested the Fortress Guard to verify whether the San Marino citizen had declared the cross-border transportation of the above-mentioned sum in cash. Because he had not declared it, the FIA sanctioned the San Marino citizen for violations of the “cross border transportation of cash and similar instruments” legislation. The sanction imposed by the FIA amounted to €1 500, equal to the 10% of the (undeclared) amount exceeding the threshold of €10 000.

3.2.3. Operational needs supported by FIU analysis and dissemination

195. The FIA’s disseminations submitted spontaneously or upon request to a large extent support the activities of the JA and to some extent other competent authorities. However, there are several obstacles that impede the effectiveness of the FIA, i.e. inadequate number of human resources to conduct comprehensive strategic analysis and operational analysis of complex ML cases.

196. As the financial intelligence unit of San Marino, the FIA is operationally independent. The FIA is reasonably well developed (IT tools and software) and structured (premises and units created within) to perform its core functions as the national centre for the receipt and analysis of suspicious activity reports and other related information. However, the resources are not adequate to perform the comprehensive strategic analysis that would support the JA and LEAs. The Financial Analytical Unit of the FIA currently has 3 trained analysts and a Deputy Director. This Unit deals with strategic analysis, operational analysis and the exchange of information with foreign FIUs. . The budget of the FIA has not changed over the last six years and most of its allocations are spent on salaries.

Operational analysis

197. Each report received by the FIA is enriched by intelligence information gathered through the access to on-line public and private databases and through other information obtained upon request. Reports submitted to the FIA by FIs and professionals are sent and received electronically through the secure channel of STR-WEB online portal.

198. The FIA's operational analysis consists of 4 steps: receipt and processing of STRs; prioritisation process and types of operational analysis; use of FIA's special measures during operational analysis; high level strategic analysis on statistical data derived from STRs (e.g. some CDD and transactional information).

199. The San Marino authorities have provided the following statistics on additional requests sent to the OEs (see Table 14) during the reviewed period. This information shows that despite all of the data directly available to the FIA, analysts also actively request information from OEs.

Table 14: Ad-hoc requests – FIs category

FIs category	Ad-hoc requests	%
Banks	611	86,42%
financial/fiduciary companies	85	12,02%
payment institution	4	0,57%
asset management companies	3	0,42%
insurance companies	2	0,28%
San Marino Poste	1	0,14%
CBSM (as bank)	1	0,14%
Total	707	100%

200. The AT was provided with only a few examples of meaningful analysis of complex ML cases that would be in line with the risk profile and which have been detected or prosecuted based on the dissemination and analysis of the FIA in recent years.

Strategic analysis

201. Apart from operational analysis, the FIA has also carried out some strategic analysis since 2017. The FIA performed an “in-depth strategic analysis” with reference to transnational financial flows (from/to San Marino and to/from foreign countries) through the use of the “World Country Survey” (WCS) tool²⁹. In addition, the FIA has drafted several thematic strategic analysis products, i.e., on the use of cash (2010 – 2018); non-profit organisations (NPOs) and the risk of financing terrorism; programmes of proliferation of weapons of mass destruction and their financing; terrorism and its financing: the European experience.

202. The FIA's strategic analysis is also focused on the identification of the main characteristics of the STRs received (AS1) and of the related cases disseminated to the JA (AS2). AS1 and AS2 collect, among other topics, the economic/professional/personal profile of the reported subjects, the countries involved, as well as the products and services used. AS1 is also used for the purpose of training OEs.

203. The FIA demonstrated a high level of adaptability and prompt reaction to emerging risks, in particular concerning the recent risks arising from the Covid-19 emergency. The FIA drafted and distributed to OEs the strategic analysis “Threats, vulnerabilities and consequent AML/CFT risks

²⁹ World Country Survey is offsite supervisory tool also used for the purposes of NRA.

related to the Covid-19 emergency”³⁰ shortly after the outbreak of the pandemic. As a result, a STR was received and transformed into the case demonstrated below.

CASE STUDY 5: Spontaneous dissemination by the FIA (originated by an STR sent to the FIA) to the JA, special measure by the FIA (monitoring order) and national cooperation between FIA and NCB Interpol San Marino.

In May 2020, the FIA received a STR submitted by a bank. The STR concerned a UAE company which credited payments (amounting to over USD 2.000.000) related to a brokerage service provided to Chinese manufacturing companies on the sale of Covid-19 protective masks and suits in favour of (only) one Italian company “A.”

The bank reported the fact that such sums were mainly used by the UAE company to pay commissions to an Italian company “B”, whose shareholders and directors were linked to the Italian company “A”, sole buyer of the Covid-19 protective masks and suits.

The analyst of the FIA assigned a “high” level of priority of analysis, a “high” level of “substantial” quality and a “high” level of “intelligence”.

Considering the assessed “high” level of priority of analysis, 3 days after receiving the STR, the FIA ordered the bank to monitor the reported account (held by the UAE company). Then the FIA analysed in depth the reported financial flows and related subjects, in term of directors and legal representatives, shareholders and beneficial owners.

After conducting such an analysis, the FIA disseminated the case to the JA for suspected ML activity in relation to a possible fraud over-invoicing for supplies of Covid-19 medical devices in order to obtain illicit proceeds from an Italian public body.

The criminal investigation is still ongoing.

204. Despite the strategic analysis conducted by the FIA, there is no meaningful strategic analysis of ML trends and patterns on whether San Marino might be used as a transit jurisdiction through which to pass laundered property. The lack of a strategic analysis also has a negative impact on the LEAs’ and the Investigating Judges’ understanding of how such cases may be investigated and their understanding of ML/TF risks (see IO.1 and IO.7).

Dissemination of reports

205. It is permitted to use the FIA’s financial intelligence as evidence in the investigation of ML/TF and predicate offences. In this respect the FIA spontaneously disseminates its analysis to the JA to progress criminal proceedings. The total number of both type of disseminations made each year – spontaneous and upon request – and the number of disseminations upon request has remained relatively constant over past years (see Table 15).

Table 15: Statistics on cooperation between the FIA and the JA

Year	Cases disseminated by the FIA to the JA	Cases disseminated by the FIA upon request of the JA
2015	20	17
2016	13	21

³⁰ The FIA newsletter number 01/2020.

2017	9	8
2018	13	13
2019	14	19
30/06/2020	5	6
Total	74	84

206. The FIA's resources and output are used primarily by the JA to whom the FIA disseminates its financial intelligence. Dissemination in the form of a report of financial analysis is accompanied by description of the persons involved, suspected transactions and connections, supporting documents and reasons for dissemination. In cases of complex analysis, the dissemination report also contains flow charts to facilitate the understanding of the transactions reported. There are guidelines and work procedures in place to determine the scope of the information to be included in an intelligence report and the timeframe.

207. The FIA's financial analysis and disseminations support the operational needs of the JA to a considerable extent both in the investigation and prosecution of ML and, to some extent, predicate offences and the confiscation of criminal proceeds (see Table 16). The FIA's analysis in relation to tax offences has been disseminated 10 times during the assessment period.

Table 16: Statistics on the FIA's dissemination³¹

Year	A	B			C					
	Cases opened by the FIA*	FIA disseminations to the JA			Phase of investigations related to cases disseminated by the FIA					
		Cases disseminated by the FIA to the JA*			On-going investigations**			Prosecutions**		
	Total	ML	Other offences	Total	ML	Other offences	Total	ML	Other offences	
2015	155	20	19	1	0	0	0	12	11	1
2016	151	13	9	4	1	0	1	9	7	2
2017	97	9	8	1	0	0	0	7	7	0
2018	80	13	10	3	8	6	2	2	0	2
2019	91	14	9	5	13	9	4	0	0	0
2020*	43	5	4	1	5	4	1	0	0	0
Total	617	74	59	15	27	19	8	30	25	5
*as at 30.06.2020										
** as at 14 th September 2020										

³¹ Table 16 shows the number of cases disseminated by the FIA to the JA (Investigating Judges) in each year from 2015 to 30 June 2020 and their subsequent outcome as of 14 September 2020: still under investigations (on-going investigations) or prosecutions (for prosecuted cases). For example, in 2019 the FIA opened 91 cases out of which 14 cases were disseminated to JA (9 cases for suspected ML and 5 cases for other offences). As at 14 September 2020, 13 cases are still under investigation and no cases have been prosecuted yet (and 1 case was dismissed by the JA).

Table 17: Ratio of ML judicial investigations per trigger

Case triggered by:	Year						Total	%
	2014	2015	2016	2017	2018	2019*		
FIA	14	20	9	8	8	7	66	69%
JA	5	5	1	1	1	0	13	14%
Police Forces	2	0	1	1	0	0	4	4%
Central Bank	0	1	0	0	0	0	1	1%
Others (complaints)	4	2	2	2	1	0	11	12%
Total	25	28	13	12	10	7	95	100%
%	26%	29%	14%	13%	11%	7%	100%	

* As at 31.07.2019

208. Intelligence disseminated by the FIA in many cases leads to investigations into ML and related predicate offences. The 48% of the cases disseminated by the FIA resulted in an indictment, out of these 30% - in a conviction and 2% cases - in an acquittal and prescription; 21% of the cases disseminated by the FIA were dismissed by the Investigating Judge and 31% are still under investigation. No cases related to TF have been disseminated to the JA in the assessment period.

209. With respect to tracing criminal assets, over €41 million of funds/assets seized were based on FIA disseminations; 40 natural persons for ML convicted, 4 natural persons and 1 legal entity for other offences/crimes; about €17,2 million of confiscated funds/assets (of which €4,9 million were for equivalent confiscation).

210. The FIA applies special measures to support the operational needs of the JA, i.e. monitoring of financial business relations, postponing transactions or blocking funds, assets or other economic resources. The results of such measures are presented in Table 18. All funds which are the subject of postponement and blocking orders (except in one case of postponement) have been subsequently seized by the JA. This shows the effectiveness of this instrument.

Table 18: FIA Special measures

Year	Monitoring measures	Postponements measures	amounts involved (€)	Blocking measures	amounts involved (€)
2015	8	3	0	5	2 479 879
2016	10	1	789 783	1	43 528
2017	6	0	225 075	2	1 532 120
2018	4	0	0	0	0
2019	14	1	0	0	0
2020*	2	0	1 453 517	0	0
Total	44	5	2 468 375	8	4 055 527

*As at 30.06.2020

211. The FIA sometimes disseminates spontaneous notes for prudential supervision by the CBSM and to its supervisory unit. In general, there is good cooperation between the analytical and supervisory units. The use of STRs is one of the pillars of the AML/CFT risk-based supervision of the FIA. The strategic analysis of STRs (in terms of number and quality) is a fundamental part of the RBS

Tool used by the FIA Supervision Unit for risk profiling OEs. The annual inspection plan is defined taking into account the opinion of the analysts. There are several cases of financial analysis carried out by analysts (or jointly by analytical and supervisory units) based on information gathered by the FIA supervisors during on-site inspections or off-site supervision.

3.2.4. Cooperation and exchange of information/financial intelligence

212. Although the size of the jurisdiction allows prompt information exchange and consultation among the relevant authorities (i.e. the FIA, the Investigating Judges, NCB Interpol and ARO). However information exchange and cooperation of the FIA with 3 Police Forces (Gendarmerie, Civil Police/Antifraud Squad, Fortress Guard), it happens rather rarely. During the on-site visit, it was noticeable that cooperation and coordination among different authorities is carried out in a good spirit. Such cooperation was even enhanced during the 2015-2016 period when some LEAs seconded representatives to the FIA to support analysts in performing financial analysis for further dissemination to the JA and the FIA Supervisory Service in its on-site inspection activity.

213. Information exchange with domestic competent authorities is mainly based on MOUs, which specify the procedures through which the information must be delivered, the secrecy level and the prohibition of disclosure to third parties without the prior written consent of the authority that provided it.

214. There are some reservations as to exchange of information between the FIA and other authorities as to protect the confidentiality of exchanged data, considering that the exchange is performed *brevi manu*, i.e. personally delivered by FIA staff to the persons designated in the MOUs (in case of exchange of information with Police Forces), or to the designated Chancellor of the Court (in case of exchange of information with the JA), or to the person appointed by the Supervision Department of the CBSM. .

215. The FIA provides to other competent authorities financial information aimed at facilitating their investigations. The LEAs and the Investigating Judges inform the FIA of alleged criminal activities and on criminal background of persons. Interpol and ARO support the exchange of information between LEAs/Investigating Judges and foreign counterparts as well as the FIA's needs in terms of foreign criminal backgrounds. The CBSM and the FIA cooperate exchanging financial information on alleged criminal activities related to the financial sector and for prudential purposes during the market entry controls.

216. The authorities organise from time to time operational meetings to discuss common specific topics and/or specific cases. There are a few examples of joint investigations performed by the FIA and LEAs (see Table 19). One of the most important examples of close cooperation (requested by the Investigating Judges) between the FIA and Police Forces was demonstrated during the joint investigation of the Mazzini case.

Table 19: Joint investigations performed by the FIA and the LEAs upon request of the JA

Year	Requests received	Cases	Average length of the related report (pages)	Average number of the related attachments (pages)	Analysed accounts
2014	6	5	9	104	29
2015	0	0	0	0	0
2016	1	1	29	961	8
2017	1	1	12	601	4
2018	0	0	0	0	0
2019	0	0	0	0	0

2020*	0	0	0	0	0
Total	8	7	50	1666	41
*As at 30.06.2020					

217. The FIA protects the confidentiality of information by ensuring that the support services, computer and communication systems of the FIA are used exclusively by the FIA staff (and protected by user ID/password access procedure) and its server network is entirely independent from that of the CBSM. The FIA IT architecture is kept insulated into alarmed separate rack. Another rack, with the same characteristics of main alarmed rack, is located into outsourcer premises (for an Active-Passive IT architecture). The access to the rack from outsourcer's technicians is allowed, and logged, only via FIA's IT Officer. If the rack is accessed, an alarm system notifies such access to FIA's IT Officer (and to the Organisation and administration Unit of the FIA). The FIA has 1 IT staff member and 2 administrative staff employed at the Organisation & Administration Unit. Finally, the FIA is structured also with the Regulation & Legal Services Unit (which consists of 2 employees) and by the Director (for a total number of resources equal to 14).

Overall conclusions on IO.6

218. Competent authorities (the Civil Police/Anti-Fraud Squad, Investigating Judges, the Gendarmerie, the Fortress Guard) use financial intelligence to a certain extent. The Investigating Judges interact more actively with the FIA (than LEAs interact with the FIA) due to particularities of the Sammarinese system. As in many other jurisdictions, the banks and other FIs submit the most STRs. DNFBPs submit a low number of STRs and some DNFBPs do not submit any STRs at all, even though all DNFBPs are subject to the reporting requirements. The reporting is not always commensurate with the materiality of the sector (see IO.4). Insufficient STR reporting on complex and sophisticated ML schemes as well as low number of STR reports by some sectors impacts producing meaningful financial intelligence in line with San Marino risk profile.

219. The FIA is reasonably well developed and structured to perform its core functions. The FIA provides operational analysis, responds to additional requests and answers and executes international requests in a timely and effective manner. San Marino has carried out some strategic analysis but there is a lack of meaningful strategic analysis of ML trends and patterns and whether San Marino is used as a transit jurisdiction through which to pass laundered property. The lack of this type of analysis is due to inadequate human resources.

220. The AT was provided with a few examples of meaningful analysis of complex ML cases that have been detected or prosecuted based on the dissemination and analysis of the FIA in recent years (see IO.7).

221. For the reasons described above **San Marino is rated as having a substantial level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

3.3.1. ML identification and investigation

222. San Marino has the legal framework and mechanisms in place to enable the effective identification and investigation of ML.

223. Potential cases of ML are either identified by a STR made to the FIA (with, in San Marino, an onward dissemination from the FIA to the JA) or, alternatively, commence as a police generated ML investigation, such as a parallel ML investigation run in tandem with the investigation into the (domestic) predicate crime. In San Marino STR initiated ML investigations are by far the most common of these 2 pathways, and the criminal property laundered usually derives from foreign predicates. There are very few ML investigations (which ultimately lead to ML prosecutions and

convictions) run in parallel with investigations into domestic predicate crime. The authorities assert that they do conduct such parallel investigations where necessary but given the small population the amount of domestic predicate criminality is low. This concentration on the laundering of foreign predicates is consistent with the country's threats and risk profile.

224. The FIA typically disseminates the STR onwards to the JA rather than directing it to one of the three LEAs whose duties include a ML investigative function.

225. All (open) investigations are under the supervision of the investigating judge (prosecutor) who has the right to give instructions and orders. There are currently three Investigating Judges in San Marino, and each one is assisted by a clerk (*Uditore Commissariale*). The investigating judge can rely on the judicial police (which is not a separate LEA but is made up of a total of 4 officers from all 3 forces) and there is co-operation between the 3 LEAs as necessary:

- a. The Civil Police, which includes the Anti-fraud Squad (*Nucleo Antifrode*.) The Antifraud Squad investigates fraud, including tax fraud.
- b. The *Gendarmerie*, which is concerned with significant crime in San Marino (such as drugs, cybercrime and crimes against minors).
- c. The Fortress Guard (*Guardia di Rocca*) the remit of which includes border controls and checking for the cross-border transportation of cash and other instruments. The Fortress Guard has not been the primary agency in a ML investigation.

226. Most ML investigations in San Marino are thus STR initiated and prompted by a dissemination from the FIA to the Court. Although all 3 LEAs may conduct ML investigations (including those parallel to any domestic predicate investigation) either on their own initiative or after receiving a request from the FIA, ML investigations conducted by any of the 3 LEAs are more likely to be at the request of the JA.

227. The JA is essential to the decision as to what is the subject of a ML investigation. The criminal registrar receives the report, opens a criminal investigation and then transmits it to the investigating judge who functions as a prosecutor (Investigating Judges and deciding judges are law commissioners who may function either as an investigating judge or a deciding judge but never as both in the same case). The decision to open is automatic based on criteria set down by the Director of the Court. The investigating judge decides which of the 3 LEAs or combination of LEAs to use to investigate.

228. Investigations into ML are treated as a priority. Cases where a limitation period is about to expire, cases which have a large number of suspects, cases where there are significant proceeds laundered, there is a risk of dissipation or where there is a MLA request, are all matters which would give rise to prioritisation. Although at the time of the on-site visit there were no formal guidelines setting out an order of priority for choosing which cases to investigate and which to not, prioritisation was achieved on a case by case basis. The AT appreciate that although a shrinking financial sector may well mean that there may be fewer opportunities for ML to thrive than there may have been in the past, complex ML cases if thoroughly investigated consume a lot of time and resources which are invariably limited.

229. The investigation and prosecution of ML is adequately resourced by the number of Investigating Judges, judicial police and clerks. Such cases are managed effectively. The Investigating Judges are skilled and motivated to investigate ML. The investigating judge may choose to delegate some investigative activities to the *Uditore Commissariale*. In substantial investigations more than one investigating judge may be assigned. An investigating judge would typically be assigned 5 or 6 ML cases per year. There would typically be between 0 and 5 ML investigations a year in San Marino which each involved several hundred thousand euros per year. Only 50/80 criminal cases per year involve proceeds exceeding €500. Therefore, the workload for each of the Investigating Judges is, on

average, of 16/26 files per year, which is equivalent to 2/3 per month. The JA was of the view that there were sufficient resources to investigate all cases referred to them.

230. Because San Marino is a small jurisdiction the decision taken on a case by case basis by the investigating judge to deploy a particular LEA or a combination of LEAs to investigate a particular ML case may well allow for a customised and effective approach to that ML investigation and may well give rise to a customised and effective system of ML investigations overall. The assessment that such an *ad hoc* arrangement would not be effective (or possible) in a large jurisdiction does not mean that it is not practical or effective for this small jurisdiction. The fact that the arrangements are tailored to the demands of the case under investigation does not render them ineffective. It may be that rigid dedicated staff units would be less effective in a small jurisdiction. All of that said, the AT are of the view that setting out formally the parameters and principles as to which LEAs would be likely to be deployed within which this more flexible system would operate and within which the investigating judge would exercise his/her judgement would be of benefit.

231. So far as policy is concerned, 2 areas require further emphasis: how to address the risks in San Marino of the ML of the widest range of foreign predicates; the need to actively promote proactive parallel ML investigations into predicate domestic criminality as a policy objective, setting out how that objective may be realised.

232. Of particular importance is to consider the risk of San Marino being used in complex arrangements in which the ML operation is spread across a range of stacked jurisdictions. There is an understandable concentration (given the jurisdiction's risk profile) on the laundering of Italian predicates but it is anticipated that San Marino is, or is at risk of being, used more extensively as one of several jurisdictions in more complex ML schemes. Based on the interviews held at the on-site, in the view of the AT, there was insufficient understanding of the risk presented to jurisdictions which bear the characteristics of regional financial centres of which San Marino is one.

233. ML investigations conducted in parallel to investigations into predicate criminality do not seem to be being conducted as regularly or successfully as might be expected. Again, this might be emphasised as a policy objective so that the LEAs would have it well in mind.

234. The authorities did not consider cash to pose a significant ML risk at present. They pointed to the fact that the number of banks and total deposits and the number of financial companies has decreased. They also advance that a reduction in the use of cash is also supported by a study carried out by the CBSM and the FIA. Looking at some of the cases from the past where huge amounts of cash have been laundered, the AT is not confident that the threat has necessarily dissipated entirely. Based on on-site interviews there is scope for increasing awareness of those typologies by which cash may be laundered. Again, further training in this area may be of benefit.

235. Table 20 below looks at the progress of cases diachronically over time, reading across (from left to right) for the reference year in which the ML investigation was commenced. Columns A give the number of ML investigations for each year, whether those investigations had an initiating STR or not, and the number of natural and legal persons investigated. Columns B give details of how many of those same cases of the same natural/legal persons proceeded as Prosecutions in the year of that Investigation or in subsequent years. Columns C show for the same cases how many natural and legal persons were convicted in any year since the investigation began. Columns D show where there was an appeal for those same cases (and there may well not have been) and how many convictions were upheld.

TABLE 20: THE PROGRESS OF ML INVESTIGATIONS IN THE REFERENCE YEAR & THEIR OUTCOMES (irrespective of whether those outcomes were in the same year or in a later year) in terms of prosecutions, convictions (at first instance) and convictions upheld on appeal/not appealed.

YEAR	NO prior STR Prior STR	A INVESTIGATIONS commenced THIS YEAR			B PROSECUTIONS proceeded (from these Investigations in this or subsequent years)			C CONVICTIONS (first instance) (from these Prosecutions)			D CONVICTIONS upheld on Appeal or convictions NOT Appealed		
		Cases	Persons		Cases	Persons		Cases	Persons		Cases	Persons	
			Natural	Legal		Natural	Legal		Natural	Legal		Natural	Legal
2014	No STR	7	27	6	6	26	6	3	20	5	1	1	-
2014	STR	11	17	-	11	17	-	10	13	-	7	10	-
2014	TOTAL	18	44	6	17	43	6	13	33	5	8	11	-
											32		
2015	No STR	5	14	2	2	6	2	-	-	-	-	-	-
2015	STR	15	38	2	9	30	2	7	17	-	-	-	-
2015	TOTAL	20	52	4	11	36	4	7	17		0		
											33		
2016	No STR	2	3		-	-		-	-	-	-	-	-
2016	STR	8	12	-	6	9	-	6	9	-	-	-	-
2016	TOTAL	10	15		6	9		6	9		0		
											34		
2017	No STR	2	2		1	2		1	2		1	2	-
2017	STR	8	11	-	7	10	-	2	2	-	1	1	-
2017	TOTAL	10	13		8	12		3	4		2	3	
											35		
2018	No STR	1	1	-	1	1	-	-	-	-	-	-	-
2018	STR	8	14	-	-	-	-	-	-	-	-	-	-
2018	TOTAL	9	15		1	1					0		
											36		
2019	No STR	-	-	-	-	-	-	-	-	-	-	-	-
2019	STR	7	14	2	-	-	-	-	-	-	-	-	-
2019	TOTAL	7	14	2							0		
2020	No STR	1	2	-	-	-	-	-	-	-	-	-	-
2020	STR	5	16	2	-	-	-	-	-	-	-	-	-
2020	TOTAL	6	18	2									

³² So far as ML investigations commenced in 2014, for 5 out of the 13 cases in which convictions were achieved, the appeal is pending, or the judgment of appeal is in the process of being issued.

³³ So far as ML investigations commenced in 2015, for 6 out of the 7 cases in which convictions were achieved, the appeal is pending, or the judgment of appeal is in the process of being issued.

³⁴ So far as ML investigations commenced in 2016, for all 6 cases in which convictions were achieved, the appeal is pending, or the judgment of appeal is in the process of being issued.

³⁵ So far as ML investigations commenced in 2017, 1 of the 3 cases in which convictions were achieved, the appeal is pending, or the judgment of appeal is in the process of being issued.

³⁶ So far as ML investigations commenced in 2018 or 2019, because investigations are ongoing there are no convictions (or acquittals) yet recorded and therefore, as yet, no appeals.

³⁷ Statistics for 2020 only run to 3rd August 2020.

236. The relatively high percentage of cases investigated each year from 2015-2019 leading to ML prosecutions and convictions suggests that the system is working effectively. It is also notable that the vast majority of these ML investigations are initiated by a STR.

237. In 2015 55% of those ML cases investigated, involving 69% of the natural persons investigated and all (4) of the legal persons investigated a ML prosecution was commenced in 2015 or a later year. In 63% of the cases prosecuted there was a conviction. And for 47% of those (36) natural persons prosecuted but none of the 4 legal persons prosecuted, there was a conviction.

238. In 2016 for 60% of those ML cases investigated, involving 60% of the natural persons investigated a ML prosecution was commenced in 2016 or a subsequent year. All natural persons prosecuted were convicted.

239. In 2017 for 80% of those ML cases investigated, involving 92% of the natural persons investigated a ML prosecution was commenced in 2017 or a subsequent year. 33% (4) of the 12 natural persons prosecuted were convicted. This would appear to be low.

240. Of the 22 investigations commenced in years 2018 to 2020 (involving a total of 47 natural person and 2 legal persons) only one has so far given rise to a prosecution. The authorities suggest that this will be because of the amount of time it takes to investigate (and obtain MLA, if necessary) before a decision is made as to whether or not to charge.

241. It is not possible to predict whether for investigations commenced since 2015 any convictions will be upheld on appeal or not (but the approach taken in Table 20 supports the proposition that the number of appeals upheld each year is relatively constant). The JA also provided an analysis of all appeal cases between 2010 and 2020 which indicated that 10% of ML convictions were overturned on appeal. Again, this figure could not be said to be excessive – nor does it suggest any difficulties in respect of how the court deals with ML cases at first instance.

242. Table 21 below takes a synchronic approach. It gives a snapshot of the numbers of cases involving the number of natural and legal persons in any one year at each of the 4 different stages of the Investigation/Prosecution/Court process, namely how many: (A) ML investigations were commenced that year; (B) how many ML Prosecutions were commenced that year; (C) how many ML Convictions were achieved that year; (D) how many ML Convictions were upheld that year on Appeal. The interest here is in how many cases are going through which stage of the process that year. (A conviction is either upheld if the appeal is heard and the conviction is not overturned or if the convicted defendant decided not to appeal the conviction). Columns A-D do not examine the same set of cases over time. The cases investigated in Column A are not (necessarily) the same cases in which prosecutions are commenced in that year in B, nor are the cases for which there are figures in A or B (necessarily) the same cases for which numbers of convictions are given in C. (A diachronic reading of the data which looks at the progress of the same cases through time from investigation through prosecution to conviction/acquittal and possibly appeal is given in Table 20 above).

TABLE 21: NUMBER EACH YEAR OF ML INVESTIGATIONS COMMENCED, PROSECUTIONS COMMENCED, CONVICTIONS AT FIRST INSTANCE ACHIEVED, CONVICTIONS UPHELD ON APPEAL.													
YEAR	NO prior STR Prior STR	A INVESTIGATIONS commenced <u>THIS YEAR</u>			B PROSECUTIONS commenced <u>THIS YEAR</u>			C CONVICTIONS (first instance) <u>THIS YEAR</u>			D CONVICTIONS (upheld on Appeal) <u>THIS YEAR</u> or convictions NOT Appealed		
		Cases	Persons		Cases	Persons		Cases	Persons		Cases	Persons	
Natural	Legal		Natural	Legal		Natural	Legal		Natural	Legal			

2015	No STR	5	14	2	8	11	-	1	1	-	2	6	-
2015	STR	15	38	2	12	42	6	5	10	-	2	3	-
2015	Total	20	52	4	20	53	6	6	11	-	4	9	-
2016	No STR	2	3	-	2	3	-	5	5	-	2	2	-
2016	STR	8	12	-	12	22	-	7	9	-	2	6	-
2016	Total	10	15	-	14	25	-	12	14	-	4	8	-
2017	No STR	2	2	-	1	3	2	2	2	-	1	1	-
2017	STR	8	11	-	7	24	2	1	1	-	4	4	-
2017	Total	10	13	-	8	27	4	3	3	-	5	5	-
2018	No STR	1	1	-	2	5	-	3	9	1	1	1	-
2018	STR	8	14	-	4	6	-	14	40	5	5	8	-
2018	Total	9	15	-	6	11	-	17	49	6	6	9	-
2019	No STR	-	-	-	-	-	-	-	-	-	1	1	-
2019	STR	7	14	2	4	6	-	8	12	-	1	1	-
2019	Total	7	14	2	4	6	-	8	12	-	2	2	-
2020	No STR	1	2	-	1	1	-	1	2	-	1	2	-
2020	STR	5	16	2	2	3	-	4	10	-	2	3	-
2020³⁸	Total	6	18	2	3	4	-	5	12	-	3	5	-

243. Between 2015 and 2019³⁹ the average numbers for investigations, prosecutions and convictions were as follows:

- a. There were 11 ML investigations of 21 natural persons and 1 legal person per annum. For every 11 investigations, 9 of those investigations would have been initiated by a STR; 2 would not.
- b. There were 10 prosecutions commenced per year of 24 natural persons and 2 legal persons.
- c. There were 9 cases per annum in which, on average, 18 natural persons and one legal person was convicted of ML at first instance.
- d. There were 4 appeal cases involving 7 natural persons as appellants in which ML convictions were upheld.

244. The number of investigations (20) commenced in 2015 was more than double that in subsequent years. The number of prosecutions commenced has also declined since 2015. The fact

³⁸ Statistics for 2020 only run to 3rd August 2020.

³⁹ The statistics for 2020 are not included in the analysis because for 2020 there is not 12 months of data, the on-site concluding at the beginning of October 2020.

that the highest number of convictions recorded at first instance was in 2018 with 49 natural persons and 6 legal persons results from these 2015 prosecutions coming to a resolution. There has also been a contraction of the San Marino banking and financial system leading to a reduction in deposits and the number of OEs operating. Such a contraction will also have led to a reduction in the number of STRs generating an investigation and plausibly that there will have been a reduction in the opportunity to launder and a corresponding reduction in the amounts laundered. The peak recorded in the registration of ML investigations in 2015 may also partly be explained by the fact that Italy operated a VTC programme (from January 2014 to September 2015). This resulted in an increase of STRs related to VTC.

245. As noted above, more investigations were initiated by a STR than those that were not. When it comes to the numbers of prosecutions commenced and convictions achieved each year, most prosecutions and convictions also derived from investigations (which may have commenced in preceding years) in which that investigation was initiated by a STR. 75% of the Prosecution cases commenced in years 2015-2019 (inclusively) involving 82% of the natural persons, prosecuted derived from investigations in which there was a prior STR. 81% of those natural persons convicted of ML at first instance over the same period were in cases in which the investigation was triggered by a prior STR.

246. With a small jurisdiction, one large case involving many defendants can have a substantial impact on the statistics for the number of persons investigated/ prosecuted and convicted.

247. The average length of time a criminal proceeding for ML is 4 years and 9 months from the opening of the investigation to the issuing of the judgment of appeal (where available). This is not an excessive length of time when in most cases the predicate criminality is foreign and evidence is obtained from outside the jurisdiction. The time between conviction at first instance and the hearing of the appeal may be between 6 months and a year. (Again, this is not excessive. A second appeal judge was recruited in 2018 to bring down the amount of time it takes to hear appeals.)

248. There are no particular difficulties in securing convictions in ML cases. In ML cases involving foreign predicates, the deciding judges (in determining whether property is criminal in origin and that the launderer knew or suspected that it was criminal in origin) are able to draw inferences based on objective factual circumstances – the evidence of those factual circumstances often being obtained by MLA. There is no need to prove the derivation of the proceeds from a particular predicate crime; it is merely necessary to prove that the proceeds derive from crime.

249. The San Marino judicial system permits the trial of a suspect for ML in his absence – as long as the suspect has legal representation. That legal representation is achieved, if necessary, by appointment from the court. This feature facilitates the trial (and likely conviction) of defendants *in absentia* and who are not present in the San Marino.

250. Looking at the statistics in Table 21 for 2015 to 2019 inclusively as averages per annum: on average 11 ML investigations commenced each year (56 in total); on average 10 prosecutions commenced each year (52 in total) (the investigations giving rise to these prosecutions may have begun before 2015) and the convictions achieved (again the investigation or the prosecution may have begun before 2015) were on average 9.2 cases of 17.8 natural and 1.2 legal persons (46 cases of 89 natural and 6 legal persons over the same period). On average there were 4.2 appeals upheld involving 6.6 natural persons over the same period (21 appeals upheld involving 33 natural persons.) Again, the investigations, prosecutions or convictions at first instance may have commenced or been achieved before 2015. Given the small size of the jurisdiction, these figures support the authorities' contention that the investigation and prosecution of ML is both prioritised and effective.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

251. The types of ML activity investigated and prosecuted are broadly consistent with San Marino’s threats and risk profile and AML policies. The number of parallel investigations into the laundering of significant domestic predicates leading to a ML conviction are not as widespread as might be expected. A summary of predicate offences provided to the AT is set out further below.

252. The 2015 and 2019 NRAs identify the level of ML threat posed by the different types of proceeds generating predicate offences (see Table 22)

Table 22: Level of ML threat posed by the different types of proceeds generating predicate offences

2015 NRA	
Predicate offence	Level of ML Threat
Swindling/Fraud	High
Corruption	
Misappropriation	
Bankruptcy/Bad faith administration	
Mafia-type criminal association/Criminal association	Medium-High
Abusive exercise of financial activity	
Betting and illegal gambling	Medium
Offences of exploitation of immigration and illegal labor	
Drug trafficking	
Usury	
2019 NRA	
Predicate offence	Level of ML Threat
Swindling/Fraud	High
Misappropriation	
Fraudulent bankruptcy	Medium-High
Criminal conspiracy/mafia type criminal association	
Corruption (including Abuse of power)/Embezzlement by public official	
Usury	Medium
Receiving stolen property	

253. The lowering of the ML threat level of corruption offences from 2015 to 2019 may not be borne out (see also IO.1). Where there are significant cases of domestic proceeds generating crime or domestic corruption, parallel ML investigations are conducted but the statistics suggest that ML investigations conducted in parallel with the investigation of the domestic predicate crime are not conducted as often as might be expected. For example, there has been a significant ML prosecution involving corruption and ML convictions were achieved in that substantial case but, it must be noted, these convictions are the subject of an appeal which has yet to be decided. Where a very significant case of domestic criminality (corruption) is detected and the laundering of the proceeds of those predicates is investigated, prosecuted and convictions are achieved, that of course is to be commended but the detection of those levels of corruption and the laundering of the proceeds from that corruption also raises questions (but not the drawing of definitive conclusions) as to how widespread that form of domestic criminality may in fact be and how much of it has been and is being successfully detected.

254. Most of the ML convictions involve the ML of foreign predicates and most of these predicates are committed in Italy. All but two of the ML prosecutions leading to convictions conducted over the review period were standalone ML prosecutions. It is likely that San Marino will continue to be at risk of being used for the laundering of Italian predicate crime. The 2019 NRA assesses the foreign threats associated with organised crime, given the geographic proximity to and economic ties with Italy, as medium-high.

255. Because (with some notable exceptions) domestic proceeds generating crime is small scale (below €500), not many criminal investigations are into predicate crimes of sufficient size to merit a parallel ML investigation (the rationale being that small-scale predicate criminality does not merit a ML investigation). Every year between 200 and 400 case files are recorded as proceeds generating crimes. However, of these about two thirds (or even more, for example in 2019) have been deemed not to be relevant (for the purpose of this analysis) because are those cases the proceeds are very modest.⁴⁰

256. When investigating domestic predicate crime, if assets or financial activity are uncovered which are not commensurate with the predicate crime investigated or the income of the suspect, a parallel financial investigation will be commenced. The authorities maintain that where the proceeds generating crime is significant then parallel financial investigations have been conducted. A summary of proceeds generating predicate criminality committed in San Marino includes swindling/fraud (including tax fraud, unfaithful declarations using false invoices, the use and issuing of false invoices), misappropriation and corruption (including the abuse of power). A domestic ML investigation may be generated by a complaint, the FIA or police report, or a decree ordered in another proceeding by the criminal judge.

257. The majority of ML investigations do not therefore begin as parallel ML investigations, ran in tandem with an investigation into predicate domestic criminality. Most ML investigations in San Marino commence as ML investigations *per se* and the laundering in San Marino is the laundering of not domestic but of foreign (typically Italian) predicates. These are the most common type of ML offences in San Marino. Over 90% of all ML convictions between 2015 and 2018 involved the laundering of foreign predicates. The investigation is likely to be triggered by a STR, a report from the FIA, a MLA request. There may be detailed information on the financial transactions. This may be linked to information acquired from foreign FIUs or Interpol, from adverse media service providers (e.g. World Check, SGR Compliance Daily Control, Cerved) or from foreign press agencies. Appropriate assistance is routinely obtained from Italian counterparts.

3.3.3. Types of ML cases pursued

258. The ability to prosecute both self and third-party ML and to achieve convictions in standalone ML prosecutions was demonstrated to the AT with relevant statistics and ML case examples being provided (see also 3.3.1 on overall number of convictions and 3.3.2 on the underlying predicates and the different types of ML cases prosecuted).

259. The following case examples are illustrative of the range of ML cases prosecuted:

<p>CASE STUDY 1: 3rd party ML in a standalone ML prosecution</p> <p>The case involved the conviction of a 3rd party launderer in a standalone ML prosecution. The predicate criminality being corruption and embezzlement in an African State. This case began with the inspection of a bank in 2011. “B” was a bank official at a SM bank. “C” was the director of a Swiss fiduciary company who created a structure involving 30 offshore company current accounts and 6 accounts in the name of natural persons. Between 2006 and 2011 about €60</p>
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⁴⁰ The authorities defined “non-relevant cases” as “those that would not produce [significant] profits from criminal activities (for example the possession of less than 500 euros worth of drugs.)”

million went through these accounts. The credits were corrupt or embezzled payments from a public authority of an African state to PEPs (or those connected to PEPs) who were Ministers and officials of that State under investigation in several countries for embezzlement and money laundering; C moved money between accounts and used funds to guarantee a credit line, provided by "T" someone in a financial company. The credits were disguised as supposed payments under procurement contracts. There were numerous anomalies which should have resulted in the bank making STRs which they failed to do. The supposed legitimacy of the offshore companies was unsupported by financial statements and the bank relied upon C for assurances as to the identities of beneficial owners. In 2012 €18,65 million in total was blocked by the investigating judge. A MLA assistance request was made to Switzerland for the interviewing of C. In 2015 B, C and T were indicted with ML. The deciding judge acquitted T and convicted B and C. C functioned as the legal representative of companies whose beneficial owners were individuals close to the president of the African state. In 2019 C's conviction was upheld on appeal and the conviction of the bank official B (who was determined to merely have been negligent) was overturned. C's sentence was 6 years and 3 months. The confiscation of €18,65 million was ordered.

CASE STUDY 2: 3rd party ML in a standalone ML prosecution

This case involved the conviction of a 3rd party launderer in a standalone ML prosecution. S. was a student who made a deposit of €270 000 in cash in a San Marino bank. S. had been introduced to the bank by M who moments before S's deposit had made a withdrawal at the same bank. In 2014 the contents of S's account (€291 079) were ordered to be seized when the involvement of M with S's father in drugs offences and offences of dishonesty uncovered on the internet. The amount deposited corresponded with the sale of a property owned by S's father – a criminal associate of M – of which evidence was obtained by MLA from Croatia. S. gave the implausible explanation that the deposit was a gift from her grandmother. This lie was taken to be evidence of guilty knowledge that the funds were the proceeds of criminality. S. was convicted of ML in 2016 and the conviction was upheld on appeal in 2018. S was sentenced to 4 years and 1-month imprisonment. There was a confiscation order for €291 079.

CASE STUDY 3: ML with foreign predicate offence (bankruptcy, embezzlement, and tax fraud)

This case involved the conviction of a 3rd party launderer in a standalone ML prosecution. Two Italian citizens who were brothers deposited €10,3 million in current accounts in a SM bank the proceeds of bankruptcy, embezzlement and tax fraud committed by others and by "A," one of the brothers. "B," a director of the SM bank allegedly also engaged in the ML and when he moved banks the laundered funds were also transferred. Amounts were withdrawn in cash and transfers were made abroad. There was also the use of a fiduciary mandate, concealment of movements of the proceeds by way of a "loan" and transfers to a Swiss current account in the name of a company incorporated in the British Virgin Islands. A company in Delaware was also used to conceal the proceeds. A MLA request to Italy established evidence of the predicate criminality in Italy. "A" and "B" were indicted with ML in 2016. Only "A" was tried because "B" died. In 2018, "A" was convicted and received 5 years and 6 months. €1,5 million which had been seized, was confiscated. In 2020 "A's" ML conviction was upheld on appeal.

CASE STUDY 4: Case involving domestic predicate offence (fraud)

This case involved the self-laundering of the proceeds of a fraud on a social services fund. The Defendant had falsified transfer orders by affixing the signatures of the President and Secretary of the Fund and making the orders out to himself or someone related to him. The Defendant admitted his fraud and the ML of the proceeds of the fraud. He was convicted in 2019 and sentenced to 3 years imprisonment. The money taken in the fraud was returned.

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

260. Sentences for ML by natural persons: Art. 199 bis, Paragraph 5 of the CC: “Anyone who commits the crimes set forth in this article shall be punished by terms of fourth degree imprisonment (i.e. from 4 to 10 years), second-degree daily fine (i.e. from 10 to 40 days) and third degree disqualification from public offices and political rights (i.e. from 1 to 3 years)”. The penalties may be increased by one degree (up to 14 years imprisonment) when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities. Thus 14 years is the maximum sentence for ML with aggravating circumstances. The highest sentence over the review period was 9.6 years. Average sentences are between 3 and ½ and 4 and ½ years.

261. Sanctions for ML by legal persons: Articles 4 and 5 of Law No. 99 of 29 July 2013 are the applicable criminal and criminal procedural rules, while Art. 6 describes the decision imposing a conviction and the criteria for the determination of sentences are laid down in Art. 7 of Law 99/2013. As far as confiscation for legal persons is concerned, Art. 8 of Law 99/2013 is applicable. Art. 6 (Decision imposing a conviction). In case the liability of a legal person is established, the Judge shall order that such legal person pay an amount not less than the amount of the gain achieved by the legal person. Moreover, the legal person shall be ordered to pay an administrative pecuniary sanction ranging from €2 000 to €100 000. In 2015 (Case Ref. 286/2014), a bank was found responsible for the offence of false indication of the beneficial owner and ordered to pay €600 000 (€520 000 equal to the advantage obtained by the legal person and €80 000 as a pecuniary sanction). Although the administrative pecuniary sanction is one of a range of measures which may be applied, the maximum pecuniary sanction of €100 000 is low. The impact of the punishment will vary according to the size of the legal person. For institutions with significant assets these fines will not be sufficient to be proportionate or dissuasive.

262. Sentences of natural persons for ML exceed the sentences available and imposed for other serious financial crimes in San Marino such as Fraudulent Bankruptcy, Insider Trading and Tax invasion. Where ML convictions are achieved, sentences are passed which (if served) would be considered to be effective, proportionate and dissuasive. That said, there is a significant reservation: because San Marino enables the trial of an alleged money launderer in his/her absence if legally represented, it is not uncommon that convictions are obtained in such cases where the defendant is in another jurisdiction. There are then significant difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them. The reasons given for the failure to extradite convicted persons was from a shortage of prison capacity. That shortcoming needs to be addressed, whether that is by building a larger prison or by making arrangements with other jurisdictions so that sentences imposed in San Marino may be served elsewhere. If custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime.

3.3.5. Use of alternative measures

263. In San Marino there are no significant impediments or hinderances which make it difficult to convict in ML cases. Even in those cases in which it is difficult to prove the *dolus* (mental element) and which result in an acquittal, there may be confiscation of those sums deemed to have originated from a crime. There is also the availability of civil confiscation.

264. In San Marino it is possible to confiscate where there has been no criminal conviction: “*In the event of dismissal of a case following extinction of the offence, the investigating judge shall order to continue to apply the seizure when clues and evidence of criminal liability have already been acquired and the value of seized assets is disproportionate to the income declared by the defendant for the purposes of income taxation, or to the economic activity carried out at the time of the seizure. In this case, the proceedings shall continue only to ascertain the conditions to impose confiscation. In case of*

death of the defendant, the proceedings for the enforcement of the confiscation order shall continue against the heirs or legatees.” (Art. 58 para 4 of the CPC 4).

CASE STUDY 5: Confiscation without a conviction

In 2011, after an STR and a referral by the FIA, sums were frozen by the Commissioner of Law. The case involved a father and his two daughters but only the daughters were tried for ML in San Marino. The predicate crime was committed abroad by the father (C) before self-laundering was criminalised in San Marino. V (who was 18 years of age) had opened a current account in a San Marino bank, with proxies enabling A (her sister) and C (her father) to operate the account. Each made huge cash deposits into the account totaling €2 150 000. This sum was then either invested in securities (valued at €300,000) or was withdrawn frequently in cash (€458 000) or moved by way of bank transfer (€40 500).

V’s young age, the use of the sums deposited, the fact that her father C had convictions (including convictions for ML) in Italy suggested that these proceeds came from felonies. The use of V and A appeared to be to conceal the source of the funds being from the criminal activities of C (although having C as a proxy would appear to defeat this aim.) Convictions of the two daughters in 2011 at first instance were not upheld on appeal in 2016 as the appeal court concluded the subjective element was missing. Recognizing the illicit origin of the sums under seizure the appeal court confirmed the confiscations in respect of the amount seized ordered by the court of first instance (€1 920 000).

265. The Civil confiscation procedure (*Actio in Rem*), according to Art. 75 of the AML-CFT Law (The AML/CFT Law) introduced specific provision to prevent and counter money-laundering and terrorist financing enabling the voiding of any action to have access to instrumentalities which may be subject to confiscation:

CASE STUDY 6: Confiscation with civil confiscation procedure

The Congress of State (San Marino Government) proceeded against “A”, the Fiduciary Company S.p.A, and Banca X S.p.A., to declare null and void the contracts entered into by “A” with the Fiduciary Company and with the bank in respect of funds and securities already subject to seizure in criminal proceedings. When the defendants were acquitted in those proceedings, civil proceedings were brought in San Marino to confiscate the funds which had been previously seized. In 2017 the civil confiscation order was made in the sum of this amount €1 490 000.

Overall conclusions on IO.7

266. San Marino has achieved a moderate level of effectiveness for IO.7. Some major improvements are needed to enhance the investigation and prosecution of ML activities and the relevant sanctioning regime.

267. In general, San Marino’s legal framework enables the effective detection, investigation and prosecution of ML, including the ability to prosecute both self and third-party ML and to achieve convictions in standalone ML prosecutions. Given the small size of the jurisdiction, the statistics and cases provided, it can be concluded that the investigation and prosecution of ML is both prioritised and effective. The types of ML activity investigated and prosecuted are consistent with San Marino’s threats and risk profile and AML policies.

268. The fact that all but two of the ML prosecutions achieving convictions conducted over the review period were standalone ML prosecutions suggests that there might be more emphasis on conducting ML investigations in parallel with investigations into domestic predicate criminality.

269. The investigation and prosecution of ML is adequately resourced by the number of Investigating Judges, judicial police and clerks. Such cases are managed effectively and often a ML conviction is achieved in San Marino before the trial of the predicate offence in foreign jurisdictions.

270. The sentences available for legal persons could not be said to be sufficient or persuasive. Where ML convictions are achieved, of natural persons sentences are passed which (if served) would be considered to be effective, proportionate and dissuasive. There are however difficulties arising from the failure to extradite convicted defendants so that they serve the sentence for ML passed upon them. The lack of adequate prison capacity needs to be addressed. If custodial sentences are imposed but not served, that can only be a factor which tends to undermine the effectiveness of the AML sanctioning regime.

271. **San Marino is rated as having a moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

272. San Marino has a comprehensive legal framework on seizures and confiscation which provides adequate legislative tools for the detection, seizure and confiscation of instrumentalities and proceeds of crime, both in domestic and international criminal cases.

273. San Marino demonstrated to the AT that the confiscation of proceeds of crime, instrumentalities and property equivalent of value is pursued as a policy objective for San Marino. However, some improvements are still possible, such as for instance in the field of asset management (function currently exercised by the Investigating Judges and the Treasury) or the conclusion of asset sharing agreements with other jurisdictions (some being under negotiation at the time of the on-site visit),

274. The Congress of State adopted pursuant to Decision n.8 of 9 September 2019 a national strategy in the field of identification, freezing, seizure and confiscation, following the input given by the Technical Commission for National Coordination.

275. Concerning the period preceding the formalisation of the policy the AT has been provided with a number of elements that do support the opinion the authorities expressed in their contributions and during the on-site visit that confiscation was a policy objective at least since the last evaluation – a few examples are:

- a. the modernization of the applicable legal framework in 2013 (law 100/2013) that strengthened the confiscation regime (cf. TC Annex Recommendation 4);
- b. the methodology followed by the competent authorities in identifying assets, also abroad; the timeliness of the seizure process; the use of all available information sources and recourse to the FIA and its special measures (postponing transactions, monitoring);
- c. the number of confiscation decisions and amounts secured, compared in particular to the size of the jurisdiction;
- d. the confirmation by case law of the new measures such as allowing for the confiscation of assets even in case of acquittal;
- e. the establishment of the ARO office (2014) under the auspices of the NCB Interpol bureau, in charge of identifying assets in the framework of international cooperation.

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

276. The Sammarinese courts routinely order the confiscation of assets previously seized over the course of a criminal investigation as evidenced by the figures below. During the interviews the authorities have stressed the fact that they have both the legal instruments and capacities, from a

staffing point of view, to efficiently identify, seize and confiscate the proceeds of crime and instrumentalities. This statement is confirmed to a large extent by the figures hereafter in Table 23:

Table 23: Sums confiscated in ML proceedings (€)

	Sums directly confiscated (FINAL)	Equivalent value confiscated (FINAL)	Sums directly confiscated (PENDING APPEAL)	Equivalent value confiscation (PENDING APPEAL)
2015	2 615 120	1 343 673	-	-
2016	8 562 815	1 220 989	-	-
2017	7 636 725	2 911 517	149 265	499 814
2018	1 962 348	653 267	9 789 936	391 806 199
2019	22 102 916	-	13 339 008	7 594 418
2020*	9 682 676	282 910	5 358 520	17 591 398
*As at 3.08.2020				

277. Decisions by the first instance judge on the calculation of the amount to be confiscated by equivalent have been overturned in 3 important cases (in third party laundering scenarios) in 2017, 2019 and 2020 by the appeal court. In these cases, the outcome of these appellate decisions substantially reduced the amount to be confiscated.

278. The reason invoked by the authorities in these cases is that the appellate judges contested the first instance validation of the estimated amounts for the confiscation by equivalent on the grounds that the imputation of the totality of the estimated laundered amounts to the sole third-party launderer was excessive and violated the principles of equality and proportionality. While this has so far only concerned 3 cases, other proceedings where appeal is pending or future proceedings could be affected, which could have a potentially negative outlook on effectiveness. While the AT cannot intervene in a debate between judges on the interpretation of Sammarinese law, it does however urge (even though not at this stage through a recommended action) the authorities, in their respective constitutional field of competence, to monitor the situation and undertake what is necessary to give full effect to the possibilities of a confiscation by equivalent value.

279. There have been cases of non-conviction-based confiscations, where amounts were confiscated despite the fact that the defendant were acquitted (e.g. on the grounds that the knowledge of the illicit origin by the latter could not be proven). There have also been two instances where “civil” confiscation mechanisms (Art. 75 of the AML/CFT Law) were applied.

Table 24: Realized value – ML proceedings

Year	Value of confiscation orders realised in ML proceedings (€)
2015	3 207 774
2016	8 680 663
2017	8 474 891
2018	2 004 888
2019	20 814 117
2020*	4 557 917

Total	47 740 250
*As at 3.08.2020	

280. The amounts confiscated by San Marino in ML proceedings are adapted to the context and size of the jurisdiction, especially when compared to the amounts seized and confiscated in domestic proceedings.

281. It has to be noted that the table below only lists the amounts seized in what San Marino determines as being significant cases, i.e. offenses generating significant amounts of money (349 from 2015 until 2019, as compared to 1156 non-significant proceedings for the same period).

Table 25: Sums seized for predicate offences committed domestically (€)

Sums seized for predicate offences committed domestically (€)	2015	2016	2017	2018	2019	2020*
Illicit trafficking in narcotic drugs and psychotropic substances	-	-	775	195 415	-	-
Fraud	42 151	98 883	107 336	641 000	-	-
Counterfeiting currency	100	50	-	50	-	-
Robbery or theft	1 105	125	-	70	100	80
Forgery	-	-	-	-	165	-
Tax crimes (related to direct and indirect taxes)	580 974	-	-	-	-	526 872
Total	624 330	99 058	108 111	836 535	265	526 952
*As at 3.08.2020						

Table 26: The amounts confiscated for predicate offenses (€):

	2015	2016	2017	2018	2019
Direct	1 087 746	-	-	16 832	265
By equivalent	154 177	-	-	-	-

282. San Marino requests the repatriation of assets seized abroad (term which also encompasses the confiscation – through a confiscation by equivalent – of assets located abroad, and not necessarily moved there); some requests have so far not been successful and have been delayed by circumstances outside control of San Marino. The fact that the requests concern mainly one jurisdiction (further requests were made to another jurisdiction in a case currently under appeal and hence not reproduced here) is consistent with the jurisdiction's context and risk profile. No request to recognise a confiscation judgment from abroad has been received during the period under review.

Table 27 - San Marino requests for the repatriation of assets seized abroad (€)

Final Judgement	Confiscation of equivalent value	Date of request	Destination Country	Status
Conviction 113/2011	4 361 364	11.08.2011	Italy	Ongoing

Conviction 26/2013	1 644 054	04.09.2013 09.10.2018	Italy	Refused
Conviction 86/2016	16 159	11.10.2018	Italy	Ongoing
Conviction 36/2017	19 477	11.10.2018	Italy	Granted
Conviction 9/2013	605 184	04.09.2013 11.10.2018	Italy	Ongoing
Conviction 72/2016	390 330	10.10.2018	Italy	Ongoing
Conviction 134/2016	112 500	09.10.2018	Italy	Granted
Conviction 171/2016	203 000	10.10.2018	Italy	Ongoing
Acquittal 1/2017	499 000	10.10.2018	Italy	Granted
Conviction 93/2017	476 040	20.10.2018	Italy	Ongoing
Conviction 2/2018	610 875	11.10.2018	Italy	Ongoing
Conviction 78/2018	24 891	11.10.2018	Italy	Granted

283. San Marino does not have a single-purpose authority in charge of managing seized and confiscated assets. As mentioned above, this task is currently entrusted to the investigating magistrates and the Treasury. During the on-site visit the authorities have however indicated that this system, while it works well with minor cases, quickly reaches its limits when complex cases with multiple seizures of proceeds generating or value losing assets (such as cars, boats, real estate with multiple tenants, shares and bonds) are concerned, raising issues of liability and workload, even though in some of these cases administrators have been appointed by the judges to assist them in their task. The AT agrees with this opinion and would encourage San Marino to consider creating a more dedicated structure for asset management – while this might not necessarily have to be a single-purpose authority, and could be hosted within another institution, a unit of asset management specialists would increase the efficiency of the system while i.a. alleviating the members of the judiciary from a task that comes in addition their normal functions.

284. Overall, the conclusion is that in ML proceedings, San Marino does confiscate the proceeds of crime and seeks, where possible, the repatriation of the assets. As regards the confiscation by equivalent value, there is a question of effectiveness given the fact that decisions in 3 important and rather recent cases have been annulled. As mentioned above, is not for the AT to intervene in a legal debate between different jurisdictions of the assessed country – the AT would however welcome a possible solution to this issue, in order not to render the possibility of by equivalent confiscation to be a mostly theoretical mean to deprive offenders from illicit gains.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

285. In San Marino, falsely/not declared or disclosed cross-border movements of currency and other bearer negotiable instruments are regulated by DD no. 74 of 19 June 2009 and subsequent amendments (for more detail reference is made to the developments under Recommendation 31 in the TC Annex). The Guardia di Rocca is entrusted with controlling the application of said legislation.

286. The controls are frequent, taking into account the size of the jurisdiction, as evidenced below:

Table 28: Controls on cross border transportation of cash and other bearer-negotiable instruments (BNI)

Year	Controls carried out	Violations ascertained	Administrative sanctions (€)	Amounts involved (€)	Instruments seized
2015	2 087	3	800	23 490	-
2016	1 938	1	570	15 700	-
2017	2 409	1	200	-	1 not filled bank cheque and fake banknotes for €280
2018	1 890	2	1 566	35 659	-
2019	2 999	3	1 010	38 590	-
2020*	549**	-	-	-	-
Total	11 872	10	4146	113 439	280
* as at 30.6.2020					
**due to COVID-19 Pandemic “lockdown” cross border controls were not carried out between 1.3. and 30.6.2020					

287. In case the ascertained violation concerns an undeclared cross border transportation of cash and similar instruments (not exceeding the value of €250 000), the suspect may exercise his/her right to voluntary settlement, which consists in an immediate payment equal to 10% of the money or similar instruments exceeding the threshold of €10 000, with a minimum of €200.

288. In case LEAs have any suspicion related to the origin or intended use of the cash they report it to the FIA or request the latter for assistance. Several such requests have been made during the period under review. Cases in the framework of which the FIA was asked to carry out a financial investigation refer to persons caught in violation of the above-mentioned decree but also to situations where other types of offenses were committed (mostly drug trafficking).

289. As illustrated in the table above, legal provisions on cross-border transport are infringed (or detected) in only 0.11% of the controls (explaining the low number of applied sanctions). The highest amount intercepted in the time period under review was around €15 000.

290. It should be noted that FIA and CBSM have jointly conducted a thematic study in 2019 on the use of cash (covering the period 2010-2018). The results of this study have shown a steady decrease over the years in the use of cash in the banking system. A progressive decrease in the average amount of transactions was also noted. In order to detect whether cash transactions may be related to cross border activities of non-resident customers, the FIA used such data for supervisory activities and financial analysis purposes. Such activities did not reveal relevant un-declared cash (and/or other BNIs) cross border activities related to non-resident customers.

291. The competent authorities consider their legislation on cross-border transportation of cash (mirroring the system of a neighbouring jurisdiction) to be effective, proportionate and dissuasive, although they indicated that there was a debate at the level of the competent institutions to raise the level of sanctions. The AT shares that opinion.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

292. The confiscation results do generally reflect the assessment of ML/TF risks and the national AML/CFT policies and priorities.

Table 29: Confiscation results per predicate offences (€)

Year	Predicate offence	NRA Threat	Sums directly confiscated (FINAL)	Equivalent value confiscated (FINAL)
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2015	Fraud and Bankruptcy	H	104 440	1 273 673
	Usury	M	853 304	-
	Drug Trafficking	M-L	1 657 375	70 000
Total			2 615 119	1 343 673
2016	Fraud (including Tax fraud) and Misappropriation	H	2 463 881	390 330
	Swindling, Misappropriation and Corruption	H	1 797 816	112 500
	Usury and Mafia type criminal association	M-H	-	203 000
	Receiving of Stolen Properties, Theft and Drug Trafficking	M	1 920 785	499 000
	Drug Trafficking	M-L	2 380 332	16 159
Total			8 562 814	1 220 989
2017	Misappropriation	H	2 139 509	2 360 000
	Fraud (including tax fraud)	H	66 493	19 477
	Embezzlement to the Detriment of Insolvency Proceedings	M-H	5 027 637	476 040
	Swindling to the detriment of public bodies, Embezzlement, Counterfeiting	M-H	403 084	56 000
Total			7 636 723	2 911 517
2018	Fraud (including tax fraud) and Misappropriation	H	169 628	24 891
	Bankruptcy, Usury, Drug Trafficking	M-H	-	610 875
	Corruption	M-H	496 381	-
	Drug Trafficking	M-L	785 310	-
	Illegal gambling and Criminal Conspiracy	L	511 028	17 500
Total			1 962 347	653 266
2019	Tax Fraud	H	3 441 599	-
	Corruption	M-H	18 661 317	-
Total			22 102 916	-
2020	Misappropriation	H	2 539 045	280 210
	Fraud	H	4 770	-
	Tax Fraud, Swindling, Bankruptcy, Bribery, Abusive Exercise of a Financial Activity, Illegal Gambling	H	162 080	-
	Tax Fraud and Misappropriation	H	7 596 955	-
	Tax Fraud, Misappropriation, Fraudulent Bankruptcy	H	1 505 544	-
	Usury, Theft, Receiving Stolen Goods, Criminal Conspiracy	M	411 070	2 700
Total			12 219 464	282 910
TOTAL			55 099 383	6 412 355

293. The figures reflect the higher level of risk of ML of foreign predicates (mostly fraud, corruption and bankruptcy – as reflected, with some minor differences, in the NRAs of 2015 and

2019) while the confiscated amounts for ML proceedings on domestic predicates are – in line with the risk assessment – rather low.

294. The figures of confiscated amounts for ML also do confirm that the authorities do prosecute ML offenders and intend to deprive them from their assets (and hence their general policy) – with a caveat in respect of the issues relating to the confiscation by equivalent, mentioned supra.

Overall conclusions on IO.8

295. San Marino has achieved IO.8 to a large extent and only some moderate improvements are needed.

296. San Marino has both the legal framework and the policies in place to deprive offenders (using seizure and confiscation measures) of the proceeds and instrumentalities of crimes (both domestic and foreign). The amounts confiscated are in line with the jurisdiction's context and risk.

297. Issues have been identified in certain cases regarding the confiscation of property of equivalent value and the management of seized and confiscated assets could be improved by improving the current mechanism by the creation of a dedicated entity.

298. **San Marino has achieved a substantial level of effectiveness for IO.8.**

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

IO.9

- 1) San Marino's legal framework to fight TF is broadly in line with the international standards.
- 2) There have been no prosecutions for TF in San Marino. Other initiatives by the Sammarinese authorities, category encompassing TF investigations, are in line with the country's context and TF risk profile.
- 3) Although there is a low number of investigations for TF, the AT is satisfied that San Marino essentially has and applies the mechanisms and tools to allow for a timely identification and investigation of actual or potential TF offenses. Other initiatives taken by San Marino in the field of CFT show an appropriate degree of commitment and awareness by the competent authorities.
- 4) The actions undertaken by San Marino regarding CFT are integrated with and support the national CT strategy.
- 5) In the absence of any convictions of TF, it is not possible to assess whether the sanctions are proportionate and dissuasive (the theoretical sanctions do however appear to be so).
- 6) No criminal justice, regulatory and other measures to disrupt TF have so far been employed when a TF conviction could not be secured.

IO.10

- 1) San Marino legal framework ensures immediate implementation of TFS related to TF through decisions of the Congress of State. In addition, the CRM has been established, which acts as the national enforcing and coordinating body in this field and is chaired by the MFA.
- 2) The CRM has not yet identified any individuals or entities or proposed any designations to the UN sanctions under 1267/1989 or 1988. San Marino has adopted domestic measures to implement UNSCR 1373. These procedures have not yet been tested in practice consistent with the low TF risk profile of the country. No requests have been received by foreign counterparts in this regard.
- 3) The understanding of TFS related obligations varies between the private sector representatives. Apart from banks, those FIs which form part of a group and accountants/auditors, there is no clear understanding among other OEs of their freezing obligations, apart from STR reporting. Most DNFBPs would rather refrain from providing services to such clients, while in some instances (REAs) there was also confusion in respect of the ECDD obligations. There was also a misunderstanding among all OEs that freezing obligations would extend to funds only, thus not covering other assets.
- 4) FIs and most of the DNFBPs use robust systems to screen their clients against the UN designations and detect funds owned by the latter. Moreover, the FIA, in its turn, informs all the OEs of the amendments to the UN lists by email in a timely manner. While the use of commercial databases is positive, smaller FIs and DNFBPs met on-site were not able to explain what additional measures would be taken to detect funds or other assets jointly owned or controlled, directly or indirectly, by designated persons or entities. On the other

hand, there have been some false-positive matches identified by FIs, which demonstrates a positive practice. To date seven STRs have been sent to the FIA but no freezing has been applied.

- 5) The FIA, together with the OCA, has identified a subset of the NPOs potentially vulnerable to TF abuse, the main parameter being the engagement in fund collection, disbursement activities and operations abroad. The OCA has been empowered to monitor the NPO sector through the financial documentation it receives. Based on the assessment of the risk of TF abuse in the NPO sector, a TF risk-based approach to monitor the sector has been developed and implemented in practice.
- 6) The NPO sector has a general understanding of the ways the sector could be misused for TF and their respective obligations. While there has been some guidance and outreach provided to the sector, the sector seemed to lack clear knowledge on TF related typologies and CFT measures in place.

IO11

- 1) San Marino applies TFS to persons designated by the UN pursuant to UNSCRs 1718 and 1737. The implementation of TFS on PF and supervision of compliance with obligations arising from thereof follows similar process as for TFS on TF.
- 2) The CRM acts as the national coordinating and policy-making body in the field of countering PF TFS. In addition, a working group has been established with the aim of identifying the interested parties and the mandatory actions to be implemented to combat P and PF. To date no such parties have been identified.
- 3) While there has been some guidance and training provided to the OEs, their understanding (apart from STR reporting) of their freezing obligations, is limited throughout all the sectors (apart from banks). There is also a misunderstanding among the OEs on the scope of assets and persons towards which freezing obligations would apply.
- 4) To date no assets have been identified and subsequently frozen. At the same time, there have been cases of STRs submitted by the banks related to dual use goods which shows a good practice.

Recommended Actions

IO.9

San Marino should consider giving the function of intelligence gathering a more permanent and institutionalised structure

IO.10

- 1) The competent authorities should enhance the understanding of the OEs on the TF related risks. Apart from banks and accountants/auditors, San Marino should improve the understanding of the OEs of the TFS framework for TF. The San Marino authorities should conduct further outreach to FIs and DNFBPs in relation to their compliance with obligations under the TF-related TFS regime. The focus should be on entities that demonstrated an incomplete understanding of their TFS obligations in order to support the continued implementation of TF-related TFS without delay. The outreach should also focus on the scope of persons and assets towards which TFS should be applied.
- 2) TF-related TFS should continue to form part of the supervisory activities of the FIA not only in the framework of off-site supervision conducted through RBA questionnaires, but also during the on-site inspections. These on-site inspections should include the verification of compliance with such obligations, by, *inter alia*, ensuring, that the screening

of entities against the UN sanctions lists includes entities already existing in the OEs databases and assets are frozen where necessary.

- 3) San Marino should further enhance the awareness of the NPO sector, including through outreach and/ or guidance to the NPOs and the donor community, with a focus on possible risks of being misused for TF and their respective obligations in this regard.

IO.11

Apart from banks and accountants/auditors, San Marino should improve the understanding of the OEs of the TFS framework for PF. The San Marino authorities should conduct further outreach to FIs and DNFBPs in relation to their compliance with obligations under the PF related TFS regime. The focus should be on entities that demonstrated an incomplete understanding of their TFS obligations in order to support the continued implementation of PF TFS without delay. The outreach should also focus on the scope of persons and assets towards which TFS should be applied.

299. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

300. There have so far been no prosecutions or convictions for TF in San Marino.

301. In its latest NRA (2019) San Marino deems the TF risk to be “low” (both the threat level and vulnerability level being “low”).

302. To assess the threat level, the authorities have taken into account a number of sources of information, being among others the review of all incoming MLA requests, specific analysis by LEAs and the FIA (including as regards cash transports), the absence of cases containing TF elements, the analysis of the fund flows to and from high-risk jurisdictions and the fact that San Marino has so far not been affected by the FTF phenomenon or other radicalisation movements.

303. Regarding the vulnerabilities, San Marino justifies the “low” rating by its strong legal framework, the commitment and focus of all competent authorities to fight terrorism and terrorist financing, and the authorities’ close coordination and cooperation (including with international partners), the good quality of intelligence (financial and LEA) and the awareness of the private sector.

304. The TF analysis performed in the NRA, although it does address the threats and vulnerabilities of specific products or services in a very limited fashion only is rather exhaustive and explains well the different actions undertaken by San Marino and how the above-mentioned conclusions were reached. The authorities’ generally good understanding and commitment was confirmed during the on-site interviews.

305. As a conclusion, the AT is of the opinion that, considering the period under review and taking into account both the information provided and the contextual elements available, the fact that there have not been any prosecutions and convictions so far for TF is consistent with the country’s risk profile. The AT further has no objective elements in its possession which would put into doubt the reasonableness of San Marino’s risk assessment although the NRA could possibly be improved by adding an analysis on products and services in addition to analysing the financial flows.

4.2.2. TF identification and investigation

306. San Marino generally has a sound legal framework to combat TF (cf. TC Annex).

307. The Sammarinese authorities involved with countering TF are mainly the Gendarmerie and the Guardia di Rocca, the FIA and the judiciary. An “Inter-forces Operational Unit” has been established regrouping operators from all three LEAs. The function of intelligence service is currently vested with the Gendarmerie. The NCB Interpol assists in the field of international cooperation and the FIA regularly exchanges information and cooperates with its foreign FIU counterparts.

308. TF is identified through STRs submitted to the FIA but also through intelligence collected (domestically and internationally) and investigations performed by LEAs (with the assistance of the FIA) and through international cooperation (FIU-to-FIU cooperation, analysis of MLA requests). The AT was provided with the following example:

CASE STUDY 1: STR on TF submitted to the FIA

In 2019 a bank reported that one of its customers, a San Marino company established in 2018 operating in the aviation business, credited its accounts with funds that seemed not to be in line with the economic profile of the company and its expected activities and turnover.

For the bank the TF suspicion arose from the fact that the company was planning to add to its fleet an additional aircraft under San Marino flag: they suspected that the planned acquisition of this aircraft could be intended to bypass flight bans (based on media reports on such practices for the transportation of illegal goods or weapons).

In addition to the analysis of the STR and related documentation (KYC, agreements etc.) the FIA sent a request for information to eight different foreign FIUs in order to gather information on the reported funds, in particular on their origin, and on the beneficial owner of the foreign companies that were main customers of the San Marino company.

To date, based on the information provided by foreign counterparts and based on the financial analysis carried by the FIA, no element of TF has been detected.

CASE STUDY 2: International cooperation on TF

The Gendarmerie investigated a fundraising activity sponsored in a local NPO which is of religious nature. The fundraising activity - publicized in San Marino through leaflets - has been carried out by an NPO from a neighbouring country (also author of leaflets) with the aim to support families and orphans in a conflict zone.

From the information acquired by the Gendarmerie, no *prima facie* elements related to T/TF matters have been detected in relation to the foreign NPO, although it emerged that the latter:

- had a previous denomination similar to a campaign conducted in a conflict zone by a well-known international NPO
- in the past had conducted promotional activities in Arabic language
- it is not included in the official list of NPOs from the neighbouring jurisdiction that may benefit of donations made directly by people through their tax return.

The Gendarmerie requested the assistance of the FIA for acquiring additional financial information. The FIA sent a request to all FIs in order to verify the presence in the Sammarinese financial system of possible business relationships related to the subjects under investigation (foreign NPO and related persons) and the execution of any transactions in favour of the foreign NPO. The FIA has also requested the assistance from a foreign counterpart.

Based on the information acquired by the FIA domestically and through international cooperation it emerged that:

- the foreign NPO has been, in the past, under scrutiny by foreign authorities in relation to its business activity and financial transactions
- the foreign NPO has received funds by two foreign natural persons resident in San Marino who attend the local NPO.

The financial intelligence analysis has allowed the Gendarmerie to expand its investigation and to share it with the foreign LEAs via Interpol. However, no TF elements emerged from domestic activities and from international cooperation.

309. There have been no investigations for TF alone initiated by LEAs without prior STR, but LEAs have in other investigations verified the possible presence of TF elements. The AT has been provided with a few illustrations thereof (see Case 2 described below as an example). No suspicion of TF was confirmed.

CASE STUDY 3: Verifying the possible presence of TF

Following controls performed on websites and social media the Gendarmerie carried out in 2019 an investigation concerning a couple residing in San Marino. On one of their social media profiles images had been posted which depicted the husband with his face covered, in military fatigues, a sword on his back and a machine-gun in his hands.

Based on checks performed by the Gendarmerie within the same day, it emerged that the couple held several fake weapons at their home and that the husband had been convicted abroad for receiving of stolen goods.

The Gendarmerie requested the cooperation of the FIA to carry out a financial investigation in to the two subjects, in order to obtain financial information on their banking activities with the purpose to evaluate whether such individuals could be potentially linked to TF.

The FIA searched available databases and sent a request to all banks in order to obtain information about the existence of any business relationship (active or extinct) of the suspects.

Based on the information received by the FIA and the results of its own investigations the Gendarmerie excluded any suspicion of terrorism or TF and the investigation was closed

310. The number of STRs in the field of TF is (in absolute terms) low (7). However, this figure is not inconsistent with the context and risk analysis of the jurisdiction. The subsequent investigation by FIA and LEAs did not confirm the TF suspicion.

311. Besides verifying the presence of any element of TF in their investigations, LEAs have undertaken a number of actions in order to detect and prevent terrorism and terrorist financing, which include:

- a. Cross-border controls and immigration control measures i.a. in respect of requests for residency permits and short stays on the territory.
- b. Transport and use of cash: cross-border controls for cash couriers are frequently made by the Guardia di Rocca. None of these controls and subsequent verifications have however indicated any use of cash for TF purposes. A study on the use of cash jointly effected by the FIA and the CBSM came to similar conclusions.
- c. Controls of certain NPOs that could be at risk: the monitoring of the attendance at certain meetings and the donors to these NPOs. Verifications were done in close cooperation with neighbouring jurisdictions.

d. Monitoring of websites: the Gendarmerie carries out controls to detect possible terrorist and TF activities of and relating to propaganda, proselytism and radicalisation.

312. LEAs cooperate with their counterparts regarding the intelligence gathering. While this function now rests with certain individuals at the Gendarmerie, reforms could be envisaged to further institutionalize the collaboration with relevant foreign counterparts and move from a system relying on individuals to one with a more permanent structure and institutional memory.

313. The FIU has during the period under review received only 7 STRs relating to possible TF suspicions (1 in 2016, 1 in 2017 and 5 in 2019). 2 STRs related to attempted transactions. The subsequent analysis by the FIU and the investigation by the LEA have however not confirmed the suspicions of the OEs and any TF offense was excluded.

314. The FIA gives, pursuant to its internal procedures, priority to STRs on TF (with a first assessment carried out immediately). The FIA can do its own analysis and will also transmit the information to LEAs. In some cases, where relevant, the FIA has proceeded to spontaneously disseminate the information to its counterparts.

315. The FIA has, under the applicable AML framework, the power to launch a TF analysis on its own initiative, i.e without a prior STR or request from a LEA or the judiciary. An example can be found hereunder.

CASE STUDY 4: The FIA launching a TF analysis on its own initiative

In 2017 the FIA carried out on its own initiative, without prior STRs, an operational analysis on the basis of information acquired through open sources and in consideration of a previously attempted transaction reported to the FIA and linked to individuals mentioned in the press.

Some individuals were accused to have been involved in a case related to illicit arm trafficking towards the Middle East (including Libya and Iran).

This analysis has been conducted with the aim to verify the presence of these individuals in the Sammarinese financial system through a “massive request for information” to all FIs.

It emerged that the above-mentioned individuals had already established business relationships in San Marino (in not so recent years). The financial transactions carried out, however, were minimal and not connected to the adverse media information. Moreover, these individuals had also attempted to carry out, without success, other financial transactions, refused by obliged entities.

FIA’s analysis of the documentation obtained by Sammarinese FIs during the CDD procedures allowed the FIA to detect other 4 natural persons connected to the ones under analysis (even if no financial transactions have been detected in San Marino).

The FIA has thereupon promptly disseminated the information acquired through NCB Interpol San Marino (including new connections detected). The latter transmitted the information to NCB Interpol Italy considering that the criminal investigation (at the origin of information acquired through open sources) has been carried out in that country.

316. In order to further enhance the identification of TF cases, the Sammarinese authorities have improved training for their staff (FIA, LEAs and the judiciary), sometimes with the help of foreign experts or organisations. The FIA also devotes time on TF with regard to its sector-specific AML/CFT training and provides guidance to the private sector which is made publicly available on its website.

317. The authorities invoke a good cooperation between all the concerned actors, FIA, LEA and the judiciary. Some cases were provided to illustrate this. Cooperation is also facilitated by the small size of the jurisdiction and the number of actors involved in the fight against TF.

318. Based on the foregoing the AT concludes that even though the numbers of STRs and investigations in the field of TF are – in absolute terms – low, without this being inconsistent with the jurisdiction’s context or TF risks, San Marino has a set of instruments and mechanisms in place that allow for a proper detection and analysis of possible TF offenses in line with its contextual factors.

4.2.3. TF investigation integrated with –and supportive of– national strategies

319. San Marino has, on 23 July 2017, adopted a national CT Strategy, based on the UN and EU CT strategies and inspired also by some other EU Member States. It is based on the four pillars’ model (pursuit, prevention, protection and response), all of them containing a number of objectives, actions and results. The Permanent CT Commission, established in 2019, has since been tasked to evaluate, monitor and update said strategy.

320. The confidential nature of the NCTS’ content (classified, for some parts, which have nevertheless been shown to the AT) do not allow for a more detailed description of its content in a public report. TF issues are addressed therein.

321. Based on the interviews and the review of the rather exhaustive National CT Strategy documents shown to the AT the AT is of the opinion that (taking also in to account the size and context of the assessed jurisdiction) despite the absence of any formal TF prosecution or conviction, the actions undertaken by San Marino in the field of the prevention and detection of possible TF offense are generally integrated with and support national CT Strategies.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

322. San Marino’s legal framework and the potential sanctions for TF are in line with international standards.

323. In the period under review, there have been no TF prosecutions and convictions. Therefore, the evaluators were unable to assess whether sanctions or measures applied in practice against natural persons convicted of TF offences are effective, proportionate and dissuasive.

4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)

324. The Sammarinese authorities have not applied alternative measures in lieu of proceedings with TF charges.

Overall conclusions on IO.9

325. San Marino has achieved IO.9 to a large extent and only moderate improvements are needed.

326. There have been no prosecutions for TF in San Marino and very few investigations. However, San Marino deploys considerable efforts to prevent and detect possible TF offenses, in line with its national CT strategy. San Marino’s legal framework and the potential sanctions for TF are in line with international standards.

327. The overall CFT mechanism could be further improved by institutionalizing the intelligence gathering and exchange process.

328. **San Marino has achieved a substantial level of effectiveness for IO.9.**

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

4.3.1. Implementation of targeted financial sanctions for TF without delay

329. San Marino has recently amended the TFS regime adopting Law 57/2019 which consolidates the legal framework on the implementation of targeted financial sanctions (TFS). Based on this law the CRM has been established, which acts as the national enforcing and coordinating body in this field and is chaired by the MFA. As regards the mechanisms in place for making proposals for designations under the UN SCR lists, as well as the national list, the CRM acts as the national competent authority for making proposals to the UNSC respective committees, as well as for making decisions on national designations. In accordance with Regulation no. 7, dated 25 September 2020, the CRM transmits the proposals for designations to the UN respective committees via the Foreign Affairs Department, while the designations under UNSCR 1373 are made by the CRM in accordance with its internal procedures. The CRM has not yet identified individuals or entities or proposed any designations to the UN sanctions under 1267/1989 or 1988, neither have such requests been received by foreign counterparts in this regard.

330. Law 57/2019, together with the Regulation of the Congress of State, ensure the implementation of TFS provided under respective UNSCRs (1373 and 1267/1989 or 1988).

331. Once the UNSCR is passed, it is adopted by Congress of State decision without delay according to Law 57/2019. By means of these decisions the country transposes each of the UNSC resolutions, together with the restrictive measures stipulated under those resolutions, to the domestic framework. The decisions are publicly displayed at the Palazzo Pubblico, at the Court and on the website of the MFA⁴¹. Once the UNSCR is adopted by San Marino, the implementation of TFS, including listings, follow up initiatives and designations occur automatically and immediately without delay, upon receipt of the updates to the list by the MFA and FIA. No separate decision by Congress of State is required for the implementation of the amendments to the lists provided under those resolutions. Both the MFA and the FIA receive the press releases by the UNSCs on UN designations/listing/delisting immediately as they are the focal points appointed by San Marino for the UN Security Committees established under the respective UNSCRs. Upon the receipt of the press release by the FIA, the FIA immediately informs the OEs of the UN updates.

332. For UNSCR 1373, the TFS, including freezing measures, at the national level are also implemented immediately as from the moment of adoption of the decision by the Congress of State and their immediate publication at the Palazzo Pubblico, at the Court and on the website of the MFA. Moreover, pending the adoption of the decisions on designation, the CRM immediately notifies the FIA of the decision to order a temporary blocking of TF related property. In practice, no such decisions have been made to date.

333. As for the communication of the designations and respective amendments, the updates are published on the websites of the MFA and the FIA. In particular, the FIA immediately notifies via email the Court, the Police Forces, the Public Administrations responsible for keeping the public registers and the OEs of the updates to the UN lists and transmits the decisions adopted by the Congress of State. During the period under review all the amendments to the lists were communicated by the FIA to the OEs and other authorities stipulated by the law on the same day they were received from the UN. Moreover, UN lists and the updates are published in a special section of the website of the Ministry of Foreign Affairs. Some delays were found as regards the communication by the MFA, although with no practical impact.

⁴¹ <https://www.aif.sm/site/en/home/restrictive-measures/congress-of-state-decisions.html>

334. Banks and other FIs use robust systems (mainly World Check and SGR) to screen their existing and potential clients against the UN designations and to detect funds owned. Some review their databases in order to incorporate the information on designations circulated by the FIA as well. Clients are checked against the TFS related lists both at the stage of establishing a business relationship and in any case of occasional transaction. Regular checks of the client base are conducted during the course of the business relationship, while the systems in place also review the client base automatically when a new entry is made to the database.

335. In general, based on the interviews held with the OEs and their supervisory authorities, the AT concluded that banks have a better understanding of their TFS related obligations than other FIs. The latter verify, before a business relationship is established or an occasional transaction is carried out, that the customer and the persons connected to them or related to them, are not included on the UN lists or on the national list. Screening is also carried out during the course of the business relationship, in relation to transactions that have been attempted or planned but not carried out. No specific issues have been identified during the supervisory activities in this regard. Those FIs which do not belong to a group could not demonstrate the ability to analyse and independently decide in relation to cases of partial matches of their clients' data with the ones under TFS related lists.

336. As regards DNFBPs, the understanding of their TFS related obligations differs among the sectors. In particular, during the on-site meetings, accountants and auditors demonstrated a good level of awareness of their obligations, which cannot be said for the rest of the DNFBPs.

337. Most of the sector representatives (excluding REAs and the San Marino gaming house) also have in place IT tools for customer screening. These DNFBPs stated that they check their clients against their database before customer onboarding. The ones that do not have IT tools in place recalled FIA communication, but were not clear on their TFS related obligations. Most of the representatives have occasional clients, thus do not conduct a regular review of the client base. As regards the San Marino gaming house, the latter stated that most of their clients are regular ones. Nonetheless, their clients are not checked against UN lists. Such in-depth checks would only be conducted in case of a winning.

338. In general, the understanding of the freezing obligations by the DNFBPs was limited to STR reporting, while the representatives of the real estate sector stated, that if they identified a designated client they would conduct ECDD or contact the FIA for further instructions. There was a misunderstanding among all OEs that freezing obligations would extend to funds only, thus not covering other assets (e.g. legal instruments).

339. As regards the measures in place aiming at identifying persons indirectly controlling or owning the assets involved in transactions, there are certain doubts as to whether most of the FIs (apart from banks) and DNFBPs are able to effectively establish the BO structure. In particular, and as described in IO 4, OEs, while performing a CDD process, mostly rely on data kept with the BO Register. At the same time, and as described under IO5, there are concerns as to whether the data in the BO Register is accurate and reliable given the deficiencies of data gathering and its verification (see also IO4). This reflects also on the ability to identify the TF designated person or entity that would be indirectly benefiting from the services provided by these OEs.

340. The FIA organise meetings and training with the FIs and DNFBPs to discuss their TFS related obligations on a regular basis. The FIA has also developed instructions and guidance for the OEs on their TFS related obligations, but it is too general and does not provide a thorough description of these obligations including in cases of listing/delisting. The OEs would benefit from additional guidance or outreach, including on their obligations to freeze the funds relating to designated persons and entities, and on the need to take additional measures to ensure that funds or assets are not wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities (without merely relying on software). Lack of guidance was also confirmed by some of the DNFBPs.

341. As for the supervisory activities conducted by the authorities, the FIA, acting as the main supervisory authority in relation to AML/CFT framework stated that the practice of covering TFS as part of the AML/CFT on-site inspections and offsite supervision via RBA questionnaires has been applied on a regular basis. Taking into account that the relatively new TFS framework (which was only adopted in 2019), as well as the COVID-19 situation, not all the FIs and DNFBPs have yet been inspected specifically with regard to TFS, including checks of their screening tools. Nonetheless, during on-site inspections carried out in relation to all OEs, the FIA has been verifying that among the customers selected as test samples (including BOs and other related persons), these are not included in the UN Lists. No violations have been detected so far.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

342. A dedicated survey on the NPO sector, its vulnerabilities and TF related risks was conducted by the FIA together with the OCA. The analysis was based on the information collected through questionnaires completed by the NPO sector, as well as data and documents lodged by associations and foundations with the Registers of Associations and Foundations. The analysis focuses on the sector activity, geographic areas of operation, including a focus on higher terrorism or TF risk countries or conflict zones, transparency of financial information, as well as awareness of ML and TF risks, threats and vulnerabilities. Based on the results of the analysis of the data, the country has identified the sub-set of NPOs which falls under the definition of the NPOs as provided by the FATF and thus may be vulnerable to TF abuse, the main parameter being the engagement in fund collection and disbursement activities and operations abroad. As a result, *5 associations* were found to fall under the definition, while a *second list* of 31 NPOs (operating domestically) were found to have the potential of being misused due to the fact that fundraising was organised by those NPOs on an occasional basis. The analysis of financial flows to and from higher risk jurisdictions was carried out with the aim of verifying whether NPOs had carried out transactions to and from higher risk jurisdictions for TF and terrorism and in order to validate the results of the questionnaire concerning the related question. The FIA and the OCA have also analysed the prospectuses on "Funding and Uses", the financial statements and notes of all non-profit entities that collect and disburse funds.

343. The assessment concluded that the TF risks associated with NPOs is considered "low", which is in line with the overall risk assessment of TF in San Marino. The survey also assessed the vulnerabilities of the legislative framework specifically targeting transparency and record-keeping requirements, while also stating that sufficient mitigation measures were taken in the form of legislative amendments. The outcome of the risk assessment of the sector also highlighted that local NPOs have in general sound practices for accounting and record keeping.

Risk-based monitoring

344. As regards the registration and monitoring of the NPOs, the NPO sector in San Marino is made up of 329 active registered associations, 23 foundations and 51 catholic entities. Associations and Foundations acquire legal personality through enrolment on the Registers. Catholic entities are also governed by the Concordat between the Holy See and San Marino. A small portion of NPOs operate abroad, including in conflict zones where they provide humanitarian aid.

345. Registration and record keeping requirements for the sector are provided under law (please see R.8). The NPOs are obliged to publish their annual reports and financial statements. Additional safeguards are provided to ensure transparency of the NPO sector operations, including the obligation to:

a. refuse sums of cash which, in a single operation or several operations linked to the same person, exceed the annual amount of €1 000, unless through a person authorised to carry out reserved activities under law and integrations and with the limit of €25 000 per year

b. make cash payments not exceeding €1 000, unless through a person authorised to carry out reserved activities under law and integrations and with the limit of €25 000 per year

c. refuse any grant, transfer, assignment, allocation, gift, sponsorship and charitable contribution whatsoever or donations of movable goods by natural and/or legal persons that are resident in a non-cooperative country, subject to monitoring.

346. In addition, for all projects held abroad, the associations have local representatives who guarantee the correct management of the funds and the effective implementation of the projects, providing continuous feedbacks to the Sammarinese NPOs. All San Marino NPOs operating abroad work in close collaboration with religious and ecclesiastical orders rooted in the country of operation, to identify the projects to which the donation funds are destined and to implement them on-site. Collection and donation operations are channelled through the banking system in the majority of cases.

347. Since December 2018, the control of the NPO sector is carried out by the Office for Control Activities (OCA). All reports provided by the registered NPOs are reviewed by the Office for Control Activities which has a broad range of powers in this regard (including the power to request any additional information and documentation).

348. Based on the outcomes of the survey a risk-based approach towards the NPOs which could be at risk of TF has been implemented by the state authorities. The monitoring is exercised through annual desk-based control, which also includes consideration of the TF component based on the financial and additional information provided by the NPOs. The latter is compared with information included in various databases, *inter alia*, with the list of associates and members of the NPOs which is used to determine any possible link with T and TF.

349. The TF component is reviewed on a regular basis in respect of these *5 associations* and the *second list* of NPOs as a priority. The OCA performs additional checks based on the project in which the NPO is involved. During these checks the OCA gathers, analyses and verifies additional information and documents (for example on supply contracts and the request of photographic evidence to ensure that the funds were spent according to the stated purpose). For the subset of the NPOs at higher risk, the OCA and FIA have organized individual meetings to verify the procedures and controls in place on the funding and the identity of beneficiaries and donors. During these meetings the OCA and FIA check information, data and documents (i.e. contracts, projects, business plans, informative papers and lists of donors).

350. The OCA has the power to apply sanctions against NPOs which do not comply with the provisions of the law. The violation of the provisions concerning the use of cash and non-cooperative country lead to the dissolution of one association. Non-compliance with the obligation to carry out financial transactions according to traceable methods leads to the loss of the benefits granted by Law 75/2016 and to the application of the sanctions envisaged by the law. To date the OCA has applied some administrative sanctions but no sanctions or remedial measures have been taken against NPOs in relation to TF because there have been no violations.

351. The OCA and the FIA cooperate on a regular basis through the exchange of information and expertise in this field. In addition, the OCA, FIA and MFA, with the support of Tax Office and other stakeholder authorities, have cooperated in the framework of the work carried out for the identification of NPOs at risk, the subsequent in-depth analyses, as well as the meetings with the NPOs, demonstrating a good practice of coordinated interagency approach.

Outreach

352. As for outreach, attention has been focussed on the 5 associations that operate abroad in conflict zones or near to conflict zones and having financial flows to/from San Marino in relation to high-risk jurisdictions. Individual meetings were organized by the OCA to verify procedures and

controls in place which also aimed at raising awareness in the sector of the possible ways in which it might be misused for terrorism and TF purposes.

353. The FIA also developed a paper which was made available on its website on the ways NPOs might be potentially misused. The AT could not confirm that the overall level of NPO sector awareness of the CFT legislation, the sector’s obligations in this field and the risk-based survey findings were satisfactory. Awareness of the possible ways in which the NPO sector might be misused for TF purposes was very limited.

4.3.3. Deprivation of TF assets and instrumentalities

354. As provided under the TC Annex, San Marino has a sound legislative framework setting appropriate mechanisms for deprivation of the TF related designated person’s assets (see also Recommendation 6). Although no assets have been frozen pursuant to the sanctions regimes under UNSCR 1267/1989, 1988 or 1373, the competent authorities demonstrated that their ability to take actions under other UNSCR sanctions regimes as per freezing of assets, unfreezing of funds and providing access to frozen funds.

355. A number of FIs and DNFPs mentioned that they came across false positive matches under UNSCRs 1267/1989 and 1988. A total of 7 STRs have been filed with the FIA, one of which was in relation to a sanction hit identified by a payment institution. In this case, as no funds were available to the institution, it closed the account together with the filing of an STR.

<p>CASE STUDY 1: STRs related to potential TF (false positive matches)</p> <p>Between October and November 2019, the FIA received STRs from 2 banks and 1 payment institution concerning an (alleged) match between a Turkish citizen listed on the World-Check database as a person sentenced to imprisonment for membership of a terrorist organization and the main shareholder and BO of a San Marino company (i.e. the reporting FI’s customer), established in 2017, operating as “tour operator”.</p> <p>Consideration of the Turkish citizen in respect of terrorism was not clearly identified (because the lack of date and place of birth on World-Check database - [CRIME - TERROR CATEGORY NOTICE]), the FIA sent a (urgent) request for cooperation to NCB Interpol San Marino in order to gather (through NCB Interpol Turkey and other countries, such as Italy) information on any criminal record regarding the shareholder/BO of the San Marino company and, above all, to verify whether he/she was the same Turkish citizen listed in World-Check database.</p> <p>On the basis of the information provided by the NCB Interpol San Marino (which also included the negative outcome of searches performed on ASF - Automated Search Facility database of Interpol and TSC - Terrorist Screening Center of a foreign top security and intelligence agency), the FIA was able to determine that the member of a terrorist organization and the person who was the BO of a San Marino company were not one and the same. This was a “false-positive” case.</p> <p>It’s worth noting that each reporting bank requested to the reported person an update of his/her Turkish criminal record. Hence the reported person provided them with the related documents: no indictments/charges or criminal proceedings emerged against him/her.</p> <p>CASE STUDY 2: request for assistance on potential TF (false positive match)</p> <p>In June 2019, the FIA received a request for assistance (according to Art. 5 of the FIA Instruction, Series: FIs, no. 007 of 22 November 2019) from a bank regarding a natural person identified in the context of TF/CTF checks: there was a potential match between the remitter of a wire-transfer to be credited at the reporting bank (an Italian citizen) and the Italian alias of an individual of Tunisian origin listed in the World-Check database as being related to terrorism.</p> <p>The request for assistance was to verify the ID data of the remitter of a wire-transfer (of € 1 000) ordered from an Italian current account in favor of an account held by a San Marino company</p>
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(operating as a provider of services relating to requests to be submitted by applicants for teaching in schools, universities, etc.). The credit of the wire-transfer was suspended by the bank (awaiting further information and detail on it).

The same day of the request by the bank, the FIA sent an urgent request for cooperation to the Italian FIU in order to gather such ID data by providing the foreign counterpart with the ID data of the remitter's account, i.e. IBAN code.

On the basis of the information gathered by the Italian FIU, the FIA was able to determine that the match emerged between the remitter of the wire-transfer sent in favor of a San Marino company and the alias of the individual related to terrorism and was a "false-positive" case.

Such outcome has been disseminated by the FIA both to the requesting bank and to the CRM as set under Art. 3, paragraph 3 of Law No. 57. The latter was also informed that from the in-depth financial analysis of the account held by the San Marino company, no useful element emerged for the purposes of a possible designation of the Italian citizen in the national list.

In the meanwhile, the bank also requested the assistance of the correspondent bank in order to obtain the ID data of the remitter. The correspondent bank confirmed the "false-positive" case.

356. Considering the level of awareness of the obligations under the TFS regime demonstrated by banks and accountants/ auditors, the AT concluded that the latter would also be capable to identify and freeze funds in case of an actual match with individuals and entities designated under the lists and included in the screening tools and whenever funds were found under their possession. At the same time, there are issues related to the understanding of the other OEs on the scope of persons (not just directly listed ones) and assets (aside from funds) towards which TFS should be applied. Moreover, some of the OEs, as provided under core issue 10.1 confuse TFS related obligations with ECDD and would rather refuse engaging in business relationship instead of freezing the assets. Thus, the AT cannot confirm the overall effectiveness of the system in place to implement TFS related obligations by all the OEs.

357. In the absence of prosecutions, convictions, as well as confiscations for TF in San Marino (see IO.9), no other measures to deprive terrorist of assets have been applied.

4.3.4. Consistency of measures with overall TF risk profile

358. The TF related threats and vulnerabilities were first assessed in the framework of 2019 NRA. At that, the level of TF threat in San Marino was assessed as "low" due to the absence of several elements: terrorism and TF cases prosecuted or investigated in San Marino; domestic cross-cutting crimes which do not contain terrorism and TF elements; MLA and extraditions related to terrorism and TF. A number of measures have been taken by the San Marino authorities to further enhance the structural elements aimed at countering terrorism and TF, among which are a strong political commitment, robust CFT legal framework and a good level of domestic and international cooperation which facilitates the exchange of information.

359. New CFT legislation was developed, based on which the CRM was created to coordinate the CFT policy. Guidance and outreach has been provided to the private sector on their newly assigned responsibilities in the CFT framework. Based on the above, the AT has concluded that the measures taken by the San Marino are broadly in line with the overall TF risk profile, with effectiveness related deficiencies still being present as elaborated above.

360. Concerning whether the measures taken in the NPO sector are consistent with the TF risk: the country has not only identified the categories of NPOs which fall under the FATF definition for having the potential of being misused for TF but went further by identifying the 5 specific NPOs which, based on geography and the type of their activities, could potentially be misused for TF. As a result, risk-based monitoring has been applied and additional meetings, aimed at awareness raising, were

organised with these entities. Whilst the AT acknowledges the efforts made by the authorities to ascertain whether there is awareness and then to raise awareness of potential cases where NPOs may be abused for TF, the OEs met on-site lacked awareness of the level and ways in which NPOs may be exposed to TF risks.

Overall conclusions on IO.10

361. San Marino national legal framework ensures immediate implementation of TFS. A TFS related coordination and policy making body has been created with the involvement of competent state authorities. OEs have been provided with guidance and outreach on their TFS related obligations. The understanding of these obligations differs across the sectors. There are some deficiencies in relation to the scope of persons and assets towards which TFS should be applied by the DNFBP sector. This issue to some extent impacts the overall effectiveness of the system aimed at the deprivation of assets related to terrorism and TF.

362. The country has identified the NPOs which fall under the FATF definition of NPOs (and could be at risk of TF misuse) and applied risk-based monitoring towards these entities. It has provided outreach and some guidance to these entities. Nonetheless, the awareness of the NPO sector remains limited.

363. The country has achieved IO10 to some extent. **San Marino is rated as having a moderate level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

364. San Marino implements TFS relating to the proliferation and PF without delay based on Law 57/2019. The legal basis for the application of TFS under UNSCRs 1718 and 1737⁴² and their successor resolutions is the same as for TFS related to terrorism and TF. Implementation of TFS related to PF follows the same processes as with TF sanctions. As described in more detail under IO.10, Law 57/2019 ensures that UNSCRs are in their entirety binding in San Marino and provides for a mechanism to notify relevant competent authorities, all OEs and public administrations of new designations and updates. In general, once the UNSCR is passed, it is adopted by Congress of State decision without delay according to Law 57/2019. Once the UNSCR is adopted by San Marino, the implementation of TFS, including listings, follow up initiatives and designations occur automatically and without delay upon receipt of the updates to the list by the Foreign Affairs Department (FAD). Both the FAD and the FIA receive the press releases by the UNSCs on UN designations/listing/delisting immediately as they are the focal points appointed by San Marino for the UN Security Committees established under the respective UNSCRs. Upon the receipt of the press release by the FIA, the FIA informs the OEs immediately of the UN updates.

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

365. San Marino implements TFS relating to the proliferation and PF without delay based on Law 57/2019. The legal basis for the application of TFS under UNSCRs 1718 and 1737⁴³ and their successor resolutions is the same as for TFS related to terrorism and TF. Implementation of TFS related to PF follows same processes as with TF sanctions. As described in more detail under IO.10, Law 57/2019 ensures that UNSCRs are in their entirety binding in San Marino and provides for a mechanism to notify relevant competent authorities, all OEs and public administrations of new designations and updates.

⁴² UNSCR 1737 and its successor resolutions were terminated with the adoption of UNSCR 2231 (2015).

⁴³ UNSCR 1737 and its successor resolutions were terminated with the adoption of UNSCR 2231 (2015).

366. Implementation of TFS related to proliferation and PF is ensured by the CMR, which acts as the national coordinating body in this field, while enforcement is the responsibility of the FIA. The restrictive measures include the freezing of funds and other assets of designated persons and entities, and these measures are effective from the date of adoption of a decision by the Congress of State. Recommendation 7 in San Marino requires the freezing obligation is applicable to all natural and legal persons and prior notice of the freezing is prohibited.

367. The measures San Marino has adopted to ensure proper implementation of TFS related to PF without delay and communication of these designations and obligations to relevant sectors, including procedures on designation/listing, freezing/unfreezing, de-listing and granting exemption are described under IO.10.

368. De-listing procedures for TSF in relation to PF are covered by Art. 18 (5) of Law 57/2019 and Art. 8 subsection 1(a) of the Regulation no. 7 of the Congress of State from 25 September 2020, which describes the method for submitting direct de-listing requests at the Focal Point by individuals, groups or entities included in the lists of the Sanctions Committees of the UN Security Council, with the exception of the list of the ISIL (Da'esh) and Al-Qaida Sanctions Committee, or, in the case of their death or dissolution, by their legitimate beneficiaries.

369. Anyone subject to the TFS by application of Law 57/2019 may apply to the CRM, by means of a written and reasoned request, for total or partial exemption from the application of such measures. The request of exemption may be submitted in order to meet the applicant's own needs or those of a member of their family, or to exercise a fundamental right. To date, no requests for exemption from the restrictive measures (regarding the use of frozen assets for authorise purposes) have been made.

370. The screening of clients against sanction lists and detection of any potential TFS related assets is conducted by the OEs in the same way as described under IO10. Overall, it should be mentioned, that the OEs, apart from banks, were not clear on the PF related TFS as opposed to TF TFS. Their understanding was limited to the screening of clients against sanctions lists. In general, it appears that there was no sufficient understanding of the freezing obligations of the DNFBPs, apart from STR reporting. In most of the cases the OEs would refrain from providing services to clients listed in the UN lists.

371. The FIA advised the AT that they organise meetings and training with the FIs and DNFBPs to discuss their TFS related obligation on a regular basis as in case of TF related TFS. It has also issued some guidance for the OEs on their TFS related obligations, nonetheless, as already provided under IO 10, the OEs, especially DNFBPs, would benefit from additional sector-specific guidance on their obligations, including on de-listing, un-freezing, as well as further targeted training.

372. As for national level coordination in countering PF, the CMR is the relevant body for co-operation and co-ordination to combat PF which meets periodically at least once a year. In carrying out its functions, the CMR collaborates with the JA, the Police Authority, the NCB Interpol, the FIA and the Public Administrations, also through the request for data or information, or for the production or delivery of acts or documents.

373. To combat the programs of proliferation and PF an interagency working group has been established by means of a decision no. 3 of 19 August 2019. This working group acts in synergy with the Technical Commission for National Coordination (TCNC) and includes:

- Department of Foreign Affairs and the Finance and Budget Department (with a coordinating role),
- Fortress Guards – Uniformed Core,
- the FIA,
- Office for Control Activities,
- Tax Office,

- CBSM.

374. The purpose of this working group is to identify interested parties and the mandatory actions to be implemented to combat proliferation and PF. To date no such parties have been identified. The TCNC has approved an action-plan to facilitate and expedite the operational activities of the working group. These actions include obtaining and analyzing information on import/export of PF risk countries in comparison with the related financial flows; keeping track of companies which trade with dual-use goods; evaluating the possibility to introduce a specific law on the dual-use issue; publicizing FIA's instructions on international sanctions/PF and FIA's guidelines/publications on TFS and PF; organizing training courses, disseminating updated information, maintaining high level of awareness; conducting ongoing monitoring, collecting information and documentation on the actions taken by all the authorities involved in PF and dual-use matters.

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

375. In order to determine the level of PF threats in San Marino, the authorities assessed, analysed and verified imports and exports with Iran and Democratic People's Republic of Korea. The level of PF threats in San Marino was considered low by the authorities.

376. As with TF, OEs are generally aware of the need to have measures in place to freeze assets without delay as part of the implementation of PF TFS. Most private sector participants (except the real estate sector and San Marino gaming house) rely on commercial databases (predominantly World-Check and SRG) to screen their customer base.

377. Verification of whether OEs hold, administer or manage assets or funds subject to freezing measures and notifying FIA about any positive outcome, including attempted transactions is supported by the information provided by the San Marino authorities and with the provided case relating to financing the sale of a possible dual-use good (see case study 1).

CASE STUDY 1: STR sent to the FIA concerning (potential) TF and PF matters relating to dual use goods

In October 2016 the FIA received an STR for an attempted transaction regarding a request from an Italian company, operating as a broker, to open one or more current accounts in order to credit fees related to the buying and selling of a possible dual-use good (copper isotopes).

The Italian company had been given a mandate to act as an intermediary in the buying and selling of copper isotopes. In case of a successful outcome, its alleged customers would have received more than €10 million to their accounts from abroad. These funds would have been divided among other persons with "sub-mandates".

Due to the presence of a possible dual-use good, adverse information on the company (foreign investigations related to the director of the company concerning fraud/swindling), the profile of the director of the company (he/she was a former PEP and member of a defense commission) and the lack of information on the origin of funds to be transferred to San Marino, the bank refused to establish a business relationship. The bank notified FIA of the attempted transaction.

Following the receipt of the STR, the FIA cooperated with NCB Interpol San Marino and a foreign FIU for intelligence purposes. The FIA also sent a notification to all San Marino FIs in order to prevent the possibility of the Italian company (or its director) establishing business relationships with any other domestic FIs.

378. To date no freezing has been applied. The authorities of San Marino provided the AT with case examples concerning alleged dual-use goods (see case study 1 described above) and alleged

transportation of illegal goods or weapons (see case study 2 described below), which demonstrated the understanding and compliance of FIs, awareness of risks and co-operation, both national and international, by the FIA in cases with potential elements of proliferation or PF.

CASE STUDY 2: STR sent to the FIA concerning TF and PF matters relating to potential transport of illegal goods or weapons

In 2019 the FIA received an STR for transactions relating to an attempted purchase of an aircraft for possible use in transporting illegal goods or weapons.

A Sammarinese company established in 2018 operating aviation activities (i.e. professional aircraft management services) credited to its accounts funds that seemed to be not in line with the obliged entity's knowledge of the customer, its activities and risk profile based on what was declared by the company. The reported TF suspicion arose from the fact that the company was planning to add to its fleet (consisting of two aircraft which belonged to other not specified companies) one more aircraft, i.e. a San Marino flag aircraft, potentially with the purpose of bypassing any flight bans. There had been "adverse media" on this practice of transporting illegal goods or weapons (in particular with reference to the use of third country flagged aircraft to bypass flight bans).

The FIA analysed the supporting documents attached to the STR and sent requests for information to 8 foreign FIUs in order to gather information on the reported funds, in particular on their origin, and on the beneficial owner of two construction companies from the Middle East that were the main customers of the Sammarinese company.

To date, based on the information provided by foreign FIUs and based on the financial analysis carried out by the FIA, no element of TF or PF has been detected.

379. The mechanisms that San Marino has in place allowing it to obtain accurate basic and beneficial ownership information on legal persons, when investigating offences or breaches concerning the UNSCRs relating PF are described further under IO.5 and IO.10. In summary, certain doubts exist as to whether most FIs (apart from banks) and DNFBPs are able to effectively establish the beneficial ownership structure. While performing a CDD process, OEs mostly rely on data kept with the BO Register, while as described under IO.5, concerns are in place whether the accuracy of beneficial ownership data maintained in the BO Register is reliable given the deficiencies of data gathering and its verification (see also IO.4). As with IO.10, this reflects also on the ability to identify the PF designated person or entity that would be indirectly benefiting from the services provided by these OEs.

4.4.3. FIs and DNFBPs' understanding of and compliance with obligations

380. In relation to TFS, including TFS relating to PF, the FIs mainly rely on their IT screening tools in place to ensure that there are no designated persons/entities in their client base and have demonstrated an understanding of their obligations by identifying some positive matches. DNFBPs, except for REAs and the San Marino gaming house, also have IT tools in place for customer screening. The ones that do not use IT tools use the FIA lists and screen their customers manually.

381. Although, the FIA informs all OEs of the amendments to the UN lists by email in a timely manner, there seems to be overreliance on software systems for detecting persons targeted by financial sanctions. Apart from some banks, it is doubtful that most FIs and DNFBPs are able to detect funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities. A positive practice has been demonstrated by identifying some false-positive matches for TFS altogether.

382. DNFBPs that do not have IT tools in place were not clear on their general TFS related obligations. In particular, there was no sufficient understanding of the freezing obligations of the OEs, apart from STR reporting. In most of the cases they would refrain from providing services to such clients, while in some instances there was also confusion in respect of the ECDD obligations. There was a misunderstanding among DNFBPs that freezing obligations would extend to funds only, thus not covering other assets. Most of the DNFBPs interviewed have occasional clients, therefore they do not conduct a regular review of their client base.

4.4.4. Competent authorities ensuring and monitoring compliance

383. The FIA is responsible for supervising FIs and DNFBPs in relation to their compliance with the obligations combating proliferation and PF according to Art. 25 of Law 57/2019. To carry out this function the FIA has the power to supervise and monitor and the power to ensure compliance by means of giving orders, investigating administrative violations and applying administrative sanctions.

384. As such the FIA has issued an Instruction Series: FIs no. 007 of 22/11/2019 “Provision on restrictive measures” to provide practical guidance on the implementation of restrictive measures. The instruction covers restrictive measures in the context of obligations under combating proliferation and PF and is made public on the website of the FIA. The FIA has issued on their website a publication “Weapons of Mass Destruction Proliferation Programs and Their Financing”, which is aimed at the public and maintains a dedicated web-page on PF. Also, FIA published Guidelines, Series: FIs no. 002 of 2 June 2020 “Countering weapons of mass destruction proliferation programs and their financing”. The FIA has also the power to issue circulars covering the elements of PF.

385. The FIA has conducted supervisory activities with OEs to verify the existence of screening mechanisms or procedures to verify the presence of subjects present in the UN lists among their customers, through the periodic verification of the data filled in the customer profile. According to the findings of the FIA, FIs and DNFBPs have measures in place to screen against the list of designated targets customers and related persons. The practice of covering TFS, including PF as part of the AML/CFT on-site inspections and offsite supervision via RBA questionnaires has been applied on a regular basis. The level of exposure to PF of San Marino is low and the supervisory cycle is composed taking a RBA. Therefore, the on-site and offsite supervisory activities of the FIA to ensure compliance of OEs with their obligations regarding TFS relating to PF seem appropriate. Taking into account the relatively new TFS framework (which was adopted in 2019), as well as the COVID-19 situation, not all the FIs and DNFBPs have yet been inspected specifically with regard to TFS, including checks of their screening tools. Nonetheless, during on-site inspections carried out in relation to all OEs, the FIA has been verifying that among the customers selected as sample testing (including BOs and other related persons), these are not included in the UN Lists. No violations have been detected so far.

386. The FIA has made efforts to raise awareness on the TFS relating to PF by publishing periodic newsletters about international publications, national legislation, trends and typologies, issuing specific tailor-made publications regarding PF, organising a specific training session to give FIs practical schemes, trends and typologies tailor-made to their activity and to promote an extensive understanding of PF risks. At the same time, as provided under core issue 11.1, the DNFBP sector, would benefit from additional targeted guidance and training in this regard.

Overall conclusions on IO.11

387. San Marino has achieved IO.11 to some extent and major improvements are needed to improve the implementation of PF related TFS.

388. In general San Marino has in place the systems and procedures to prevent persons and entities involved in the proliferation of weapons of mass destruction from raising, moving and using funds,

consistent with the relevant UNSCRs. The level of exposure to PF in San Marino is low and the implementation of TFS related to PF follows the same processes as with TF sanctions.

389. Even though the supervisory activities of the FIA seem appropriate in the context of exposure of San Marino to proliferation and PF, major improvements are needed to the system. Improvements are needed in the areas of providing guidance to DNFBPs on their freezing and reporting obligations and to all OEs guidance on their obligations in respect of de-listing or unfreezing actions, also promoting understanding of DNFBPs in relation to their understanding relating of their obligations under TFS. Therefore, the Immediate Outcome 11 is achieved to some extent.

San Marino is rated as having a moderate level of effectiveness for IO11.

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

- 1) The level of understanding of the ML/TF risks varies across the private sector. While the banks and the FIs belonging to a financial group demonstrated a good level of understanding of ML risks, this was not confirmed for the rest of the FIs and DNFBPs. Smaller FIs were aware of the NRA results but could not elaborate on the specific risks their sector might be exposed to. As for the self-assessments conducted by the sectors, while those conducted by most of the OEs were found to be comprehensive, the practical understanding of ML risks by non-bank FIs and DNFBPs appeared to be limited to customer risk classification and scoring systems/tools available for assessing certain risk factors.
- 2) Apart from accountants and auditors, other DNFBPs (including those identified as being at a medium level of risk by the NRA) demonstrated a low level of risk understanding particularly of the ways they might be misused for ML and of their respective obligations. Most of the sector representatives lacked a full appreciation of their exposure to ML risks.
- 3) All sectors had a low appreciation of TF risks; their understanding seemed to be mostly limited to sanctions lists screening.
- 4) FIs (with the exception of SM Poste) broadly apply controls and mitigating measures, including through proper policies and internal procedures, commensurate with the identified risks. While policies and procedures have been put in place to mitigate the ML/TF risks in most of the DNFBP sectors (except for REAs) there are concerns about the awareness of most of the sector representatives related to those measures.
- 5) Banks and other FIs demonstrated a good knowledge of the requirements of the AML/CFT Law and the relevant regulations, including those related to CDD and record keeping. There are concerns about the ability of most of the smaller FIs and most of the DNFBPs to properly identify and verify beneficial ownership information based on their knowledge and the accuracy of the sources used (as provided under IO.5). The vast majority of DNFBPs have a basic understanding of CDD measures. The obligation to refuse a transaction and refuse or terminate a business relationship if the CDD process cannot be completed is generally understood among all the sector representatives. The FIA has in practice received STRs related to attempted (and refused) transactions both from FIs and DNFBPs which demonstrates a good practice.
- 6) Banks, those FIs which are part of a group, accountants and auditors have a good understanding of specific higher risk situations which require ECDD and have implemented adequate ECDD measures. This was not the case for smaller FIs and most of the DNFBPs which did not demonstrate a comprehensive understanding of high-risk situations and the need to apply ECDD measures. In particular this was the case in relation to TFS obligations (see IO.10).
- 7) PEPs, together with their family members and close associates are treated as high-risk customers by most of the private sector representatives. FIs and DNFBPs described screening PEPs at on boarding and ongoing monitoring stages irrespective of whether they were domestic or foreign PEPs. Nonetheless, San Marino Poste, the San Marino Gaming House and some of the TCSPs did not have enhanced measures in place for PEPs and treated them the same way as the other client categories.
- 8) FIs and DNFBPs have a good understanding of legal requirements to submit STRs and to prevent tipping-off. Most of the STRs are filed by the banking sector consistent with their

risk, while the level of reporting by some other material sectors does not seem to be commensurate with the risks they face.

- 9) FIs apply adequate internal control policies and procedures with lines of defence, and no obstacles seem to exist with respect to information sharing within international financial groups. The gaming house, lawyers/ notaries and accountants/auditors, as well as a few DPMS which are small enterprises have also appointed AML/CFT officers.
- 10) San Marino has defined VASPs under the AML/CFT Law as OEs, with all the obligations extending to this category as well. To date no domestic or foreign VASPs have been registered nor are they operating in San Marino. The sector therefore has smaller materiality as compared to other OE sectors. Deficiencies were identified: the absence of an in-depth assessment of the VASPs sector and consequent application of risk-based measures; the ability to identify natural persons carrying out unregistered VASP activity and the absence of sanctions in this regard.

Recommended Actions

- 1) The San Marino authorities should take appropriate measures to increase the risk understanding of all FIs and DNFBPs, particularly of the specific risks facing each sector and the relevant mitigating measures to be taken, including by providing further supervisory guidance, training and feedback. The authorities should ensure that all the OEs conduct regular assessments of their business specific ML/TF risks for customers, products and services which is not limited only to customer risk classification. These assessments should be commensurate with the type and size of the business and further enrich the findings of the NRA (where available).
- 2) With regard to understanding TF risks, the authorities should ensure that the TFS regime is properly understood and that OEs have procedures in place to implement effectively TFS. This should include the OEs understanding that TF risk extends beyond the screening against “terrorist lists”.
- 3) The competent authorities, are encouraged to provide further feedback (over and above that which is provided for each STR) and guidance to FIs and DNFBPs, especially to the sectors where reporting appears not to be commensurate with the risks encountered and in relation to the STR obligations to ensure adequate and timely reporting of STRs.
- 4) The competent authorities should work more closely (including through outreach and enforcement during inspections) with smaller FIs and DNFBPs, to strengthen their understanding and controls in relation to CDD (particularly with regard to the identification of BOs) and ECDD for PEPs and TFS; the regulatory requirements in relation to on-going monitoring of a business relationship (where applicable).
- 5) Deficiencies in relation to the VASPs identified under the TC Annex should be addressed to prevent illegal activities of such entities in the country.

390. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

5.2. Immediate Outcome 4 (Preventive Measures)

391. Based on their relative materiality and risk in a San Marino context, the implementation issues were weighted as follows: most important for the banking sector, which plays a dominant role in San Marino (holding 88 percent of total assets); highly important for the fiduciary companies and mandates, life insurance companies, lawyers/notaries, accountants/auditors, DPMS, San Marino gaming house; moderately important for the asset management companies, payment company and the real estate sector; less important for the insurance intermediaries, TCSPs and San Marino Poste. While the VASPs are defined under the AML/CFT Law as OEs, no domestic or foreign VASPs have been registered to date. This is explained in Chapter 1 (under materiality).

392. The AT's findings on IO.4 are based on interviews with a range of private sector representatives, findings from enforcement actions, input from supervisors and information from the San Marino authorities. Meetings with the private representatives revealed that the implementation of preventive measures varies across and within sectors. While the banking and accounting sectors, demonstrated a good understanding of their ML/TF risks and good implementation of preventive measures, the meetings with the smaller FIs (fiduciary companies, payment institution and San Marino Poste) REAs and the Gaming house revealed some concerns about uneven implementation of preventive measure.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

393. In San Marino the level and understanding of ML/TF risks and AML/CFT obligations varies across sectors depending on their size, the products and services they provide and their customer base. While the banks and the FIs belonging to a financial group demonstrated a good level of understanding of the ML risks, this was not confirmed for the rest of the FIs and the DNFbps.

FIs

394. FIs in San Marino periodically assess ML/TF risks at an institutional level in order to establish AML/CFT policies, procedures and controls commensurate with these risks. The assessment of ML/TF risks takes into account various risk factors, including those related to: the type of transactions carried out, customers, connection to countries or geographical areas, products and services offered and distribution channels used. Banks carry out periodically detailed self-assessments based on adequate measures and policies in place commensurate with their risk exposure.

395. In general, the level of understanding of the ML/TF risks and application of a RBA is more sophisticated in the banking sector, which is followed by the investment and insurance sectors. As per other smaller FIs, the risk understanding among those sectors is uneven and needs further improvements. Overall, the banking sector and the FIs which are part of a group together with the San Marino banks demonstrated a clear understanding of their sector specific ML risks. As for the rest of the FIs, most of them referred to the findings of the NRA. At the same time they were not able to articulate the possible ways or methods in which their sector could be exposed to risks, particularly those related to TF. While the country has identified the level of TF risk to be low, it is still of concern that the understanding of risks related to TF was limited throughout all of the sectors. In most of the cases this was limited to the risks posed by individuals and entities designated under UN or national lists and sanctions screening, while there was no clear understanding of the trends, methods and possible ways of TF misuse.

396. As regards the understanding of AML/CFT obligations, banks and most of the FIs demonstrated a good level of awareness and application of their obligations, as compared to some of the smaller FIs, which did not have satisfactory understanding of certain obligations as further analysed in the core issues below.

397. All of the FIs met on-site were generally aware of the results of the NRA and were consulted in the process of developing it through specific questionnaires. Moreover, the results were also communicated to them through meetings organised by the San Marino authorities. Most of the FIs stated that they had used the NRA report for their own risk assessment. Nonetheless, most FIs interviewed mainly focused on those predicate offences identified as posing the greatest threat for ML but they could not elaborate on other cross-border ML risks or other ML risks related to non-resident customers, when most of the ML predicates laundered are foreign (see IO1).

398. With regard to the outcomes of the supervisory and awareness raising activities conducted by the FIA, it should be noted that the FIA found the FIs' understanding of ML/TF risks and compliance with AML/CFT obligations to be satisfactory overall. The results of supervision in the opinion of the FIA have also demonstrated an improvement in the quality of policies and processes, an increase in the level of ML/TF risk understanding, as well as a better level of compliance with AML/CFT obligations.

DNFBPs

399. In general, the DNFBPs showed a lesser level of understanding of their ML/TF related risks and obligations compared to the FIs. At the same time the level of understanding was quite good amongst auditors and accountants met on-site; they were able to demonstrate an ability to evaluate specific risks posed by certain clients and transactions. Most of the DNFBPs sectors met on-site stated to have conducted a self-assessment of their entity specific risks (except for the REAs). The accountants and auditors stated that the risk-assessment conducted in their sector is an ongoing one and is periodically reviewed. Apart from the accountants and auditors, the rest of the DNFBP sector seems to have a poor understanding of the ML/TF risks their sector could be exposed to. Most of them (apart from the REAs and the gaming house) could at least demonstrate practical understanding of their business line related risks. The DPMS sector had general understanding of the risks their sector could be exposed to in relation to ML/TF. As for the gaming house, although identified as of moderate-risk in the NRA, it did not demonstrate sufficient understanding in this regard.

400. Lawyers (who also act as notaries) saw ML/TF risks only in relation to servicing the corporate sector but not in the purchasing or selling of real estate. Given that the revised legislation allows non-residents to purchase real estate, with the attendant risk that the real estate sector is more likely to be used to launder foreign predicates, it is questionable whether the risks in this context are understood fully. Moreover, lawyers considered their ML/TF risks to be lower than was identified in the NRA, due to the fact that some training activities have been provided for their sector representatives.

401. The understanding of AML/CFT related obligations varies between different sectors. The issues identified in the FI sector in relation to identification of BOs and TFS (as provided under IO.10) are also applicable to the DNFBPs. When comparing different DNFBP sectors for risk understanding, accountants and auditors had a clearer understanding of their obligations. They were followed by the lawyers, notaries, TCSPs and DPMS who generally had a satisfactory level of understanding on their obligations. REAs and the San Marino gaming house (further analysis provided below) were the least aware of their AML/CFT obligations. In addition, some of the DNFBPs expressed a desire for further guidance and training on their AML/CFT obligations (including on TFS) and risks. This was stressed by the TCSPs and the REAs in particular.

402. As regards the opinion of the FIA on the DNFBPs understanding and compliance with their obligations, it considers the level of understanding of the risks to be improving in most of the sectors, with the level of compliance being adequate. In the view of the AT, however, there is need for further improvement in this regard.

5.2.2. Application of risk mitigating measures

403. In accordance with the legislative requirements in place the OEs are required to implement AML/CFT preventive measures to mitigate their ML/TF risks. The extent to which these preventive measures are adequately applied varies both between and within sectors, as further provided in the analysis below. With respect to TF, most of the OEs rely on sanctions screening tools to mitigate their TF risks.

FIs

404. FIs broadly apply different controls and mitigating measures commensurate with identified risks. Based on the results of the self-assessment, the banks and other FIs have adopted AML/CFT policies and procedures. Banks have established a “three lines of defence” approach (line controls on business activities, compliance and audit) to ensure full compliance also at management level. Other FIs have less sophisticated internal controls than banks. Due to increased focus of San Marino on transparency and corporate governance all FIs reported having an independent audit function assigned with an AML/CFT mandate.

405. The OEs apply a RBA in implementing CDD measures, which mostly include sound procedures and practices in the assignment of a risk rating profile for each customer at the time of on boarding and on an ongoing basis.

406. Banks risk-rate their customers prior to establishing a business relationship using “low”, “medium-low”, “medium-high” or “high” risk ratings. The risk scoring models (usually provided by the “Netech” system), are based on the list of risk factors provided by the FIA circulars. The risk factors used to determine a customer’s risk profile include information on the customer and BOs, geography, products, services, operations and delivery channels. Most banks seem to review the risk classification of a customer where there are unusual transactions, a change in the client profile and periodically as part of ongoing monitoring. Most banks said that they would not on-board persons from high-risk jurisdictions. This was also confirmed by other OEs.

407. As for risk classification for other FIs, the latter also use IT tools based on the risk factors provided by the FIA Circular but they were not clear on the instances the risk profiles would be reviewed. Most of the FIs consider PEPs (both domestic and foreign), clients from high-risk countries and to some extent trusts to be high risk clients and applied ECDD measures towards them. This was not the case for San Marino Poste, which despite having a smaller materiality compared to other sectors, considers only clients from high-risk countries to pose higher ML/TF risk. Based on the interview with them, they would not apply ECDD measures towards PEPs.

408. Based on the findings of the NRA and the instruction of the FIA, the FIs apply additional risk mitigating measures to establish the reasons underlying cash transactions equal to or higher than €2 500, made in whole or in part with high-denomination banknotes (especially if they are frequent or unjustified). The FIA has issued FIA Instruction (FIs no. 005 of 11th February 2019) related to “Corporate governance, policies, procedures, controls and training”, according to which AML Committees were established by the FIs. With oversight on the effective application of OEs of AML/CTF/CPF prevention measures and ensuring no involvement in any illegal activity. Overall, measures taken by the FIs seem adequate. At the same time, there is a need for further improvements in relation to the risk-mitigation measures taken by the SM Poste.

DNFBPs

409. Most sectors (except for REAs) have adopted adequate policies and procedures to identify and assess the risk of ML/TF to which they are exposed to in the exercise of their businesses, taking into account risk factors, *inter alia*, related to type of transaction, customers, countries or areas of operations, products and services offered and distribution channels in accordance with the risk-factors distributed by the FIA. While some of the sector representatives met on-site demonstrated

poor understanding of their risks (as provided above), there was a lesser understanding of the measures in place to mitigate those risks by most of the sectors.

410. The DNFBPs risk-profile their customers according to the risk variables indicated by the FIA. In order to determine their customers' risk profile, lawyers, notaries, accountants and auditors use dedicated data sheets (risk customer forms) provided by the FIA. For these OEs, the risks are classified based on the risk factors stipulated under FIA circular, with the risk categories being the same as for FIs. These DNFBPs use the SGR system for risk profiling and screening their clients. A regular review is also done by these entities as part of ongoing monitoring, as well as on an *ad hoc* basis in case of change in the customer profile and unusual transactions. The types of clients which would fall under the high-risk category are typically the same as for the FIs. The FIA considers the practices in place to be appropriate.

411. As for the rest of the DNFBPs, those usually use data sheets for customer profiling, with the risks classified as limited, low, medium, high. All of these DNFBPs, except for TCSPs, were unsure of the clients which would fall under the high-risk category, although they referred to some suspicious transaction indicators which would lead them to assign a customer a high risk classification. These sector representatives mainly have occasional clients, thus no review is conducted on their risk profile. The TCSPs were clearer in their customer classification and would classify PEPs and complex structures as being of higher risk.

412. As for actions taken in accordance with the NRA findings, some regulations have been introduced for lawyers/ notaries and accountants/ auditors. Namely, CDD measures for professionals (lawyers/ notaries and accountants/auditors) are now applied in case of the transfer, at any title, of company units or shares irrespective of the amount. Moreover, the traceability of payments related to the transfer of any real estate or company shareholdings is ensured through a public deed or authenticated private agreement. As for the gaming house the traceability of funds is ensured by special chips introduced. In particular, they permit the traceability of the chips acquired sold or exchanged by customers, detecting possible acquisition or selling by third persons different from the persons who have acquired chips at first instance.

413. Overall, while policies and procedures have been put in place to mitigate the ML/TF risks in most of the sectors, there are concerns as to the awareness of most of the sector representatives related to those measures.

5.2.3. Application of CDD and record-keeping requirements

FIs

414. Banks and other FIs demonstrated varying degrees of effectiveness in applying CDD requirements, whereas the record-keeping requirements were generally well understood and implemented. Banks and those FIs which are part of a group, demonstrated a better application of CDD requirements when compared to smaller FIs.

415. CDD is applied towards clients upon risk classification made in relation to them. Ongoing monitoring is conducted based on the timelines specified by the FIA instructions using IT tools, which are in the case of banks also complemented by individual reviews. Banks and other FIs abstain from establishing business relationships, from carrying out transactions on business relationships and from carrying out occasional transactions or professional activities when they are not able to meet the CDD requirements. In these cases, the FIs decide whether or not to submit an STR.

416. Where the customer is a legal person or legal arrangement, most of the banks identified the beneficial owners by conducting online company searches, obtaining an ownership or corporate structure certificate identifying the natural person (if any) who ultimately owns or controls the customer and requesting relevant documents, e.g. trust deeds. Other FIs, tend to rely on the information on companies which is publicly available through the Company Register, Trust Register or the information from the BO Register submitted by the customer. Whereby the FIA has issued

instructions for the OEs on the proper identification of beneficial ownership information, the AT has doubts in relation to smaller FIs' ability to properly identify and verify beneficial ownership information, *inter alia* in case of complex structures considering the examples provided during interviews. This is also supplemented by the fact that most OEs rely on the information held within Registers, which might not always be accurate and up to date as further provided under IO.5.

417. On a positive side, no critical issues emerged from the FIA's supervisory activities carried out on FIs with reference to the correct identification and/or verification of BOs. Since the introduction of Art. 24(3) in the AML/CFT Law on false declarations about BOs provided by customers during CDD the FIA has received 22 disclosures (as at 30.06.2020.)

418. Although reliance on third parties when conducting CDD is allowed by the law, in practice, the reliance on third parties is carried out within a domestic financial group which is made up of a bank, a FFC, and securities and/or an insurance company. None of the other FIs, as also confirmed by the FIA, recalled relying on third parties in practice.

419. Overall, while some deficiencies regarding AML/CFT obligations are still noted, the supervisory activity results suggest that the application of the CDD measures is improving and being applied more effectively.

DNFBPs

420. The level of compliance with the CDD requirements varies among DNFBPs, with the accountants and auditors having a better level of compliance, followed by the TCSPs and lawyers/notaries. CDD measures are applied based on a risk categorisation of clients, whereas for the rest of the sector representatives more basic measures are applied, which very often are only limited to the identification of the client.

421. As set out in the analysis above, most sectors have IT tools in place. In general, all DNFBPs when identifying and verifying BOs over rely on self-declarations provided by the customer and sometimes use information held by the various registers.

422. As stated above lawyers and notaries mainly use SGR for conducting CDD. It should also be noted, that these OEs are responsible for conducting CDD for companies prior to their registration, thus the information contained in the public registers is based on the CDD information collected by the lawyers and notaries. On the other hand, the representatives of these sector met on-site were not sure whether they would always rely on the information held by the registers as sometimes issues in relation to accuracy and currency of data arise. This practice demonstrates that the lawyers/notaries are able to conduct an independent BO identification. It also shows that the lawyers/notaries do not rely on the CDD conducted by their sector representatives and thus raises concerns on the availability of accurate and current beneficial ownership information available in the BO Register as further provided under IO5.

423. Some issues were noted in relation to the CDD conducted by the San Marino gaming house. In particular, based on the regulations in place the Gaming house should identify the customers when both entering the premises and when they purchase, sell or exchange gambling chips. However, based on the interviews, gaming house would only identify the customers entering the premises, while checks on the veracity of information given and checks against some sanctions lists and geography would only be made in case of a winning.

424. The obligation to refuse a transaction and refuse or terminate a business relationship if the CDD process could not be completed seems to be generally understood among the sector representatives. The FIA has in practice received STRs related to attempted (and refused) transactions from DNFBPs, which demonstrates good practice.

425. As a result of supervisory activities, no serious infringements have been found during the supervision conducted in relation to CDD and record keeping, although there were a few cases of omissions of CDD, registration and record-keeping requirements followed with sanctions imposed.

It should also be noted, that not all of the DNFBPs have been supervised via on-site inspections. The supervision has been mainly done by the RBA questionnaires developed by the FIA.

5.2.4. Application of ECDD measures

Politically exposed persons

FIs

426. Banks and other FIs apply the same approach towards domestic and foreign PEPs, both are treated as high-risk clients. A number of ECDD measures are applied towards them, including requesting the customer to provide additional documentation, the certification of documentation, obtaining senior management approval for the establishment of a business relationship. Information on the source of wealth and funds is collected by obtaining income declarations and other related information.

427. The identification of PEPs and their family members and close associates is generally conducted through commercial databases for the screening process, both conducted at the on-boarding stage and periodically on existing customers.

428. At the same time, as provided earlier in the report, San Marino Poste, which acts as an MVTs, does not consider PEPs (either domestic or foreign) to be of high risk and based on the interviews conducted on-site no ECDD measures are applied towards them.

429. No compliance failures on ECDD measures have been detected in the context of supervisory activities.

DNFBPs

430. Accountants, auditors and lawyers/notaries have a more developed knowledge of ECDD requirements applicable for higher risk situations, including PEPs. They do not distinguish between foreign and domestic PEPs and apply ECDD once there is a PEP match. Most of them use commercial databases to identify and detect customers who are PEPs or persons associated with them. Following specific off-site activity conducted in 2017, specific on-site inspections have been carried out on lawyers/ notaries and accountants/auditors. Through these targeted inspections the FIA has acquired documentation and information regarding ECDD requirements with particular reference to PEPs. No violation has been found on the part of those professionals inspected concerning these requirements.

431. TCSPs (with some exclusions) and DPMS demonstrated a lower level of ECDD understanding in relation to PEPs. TCSPs would usually do a check at the on-boarding stage only. REAs have adopted manual checks and conduct their own research (e.g. Google search), mainly limited to the on-boarding stage as well.

432. As for the San Marino gaming house, as described in the internal procedure of the Gaming House, the latter has developed a proper procedure for the management of PEPs. At that, during the verification of the customer's identity, the gambling house operator should check if the customer is a PEP or not and enter this information into the Gaming House database. Nonetheless, the AT could not confirm the proper application of these procedures in practice, as during the interview the AT was informed that the Gaming house deals the same way with all clients, thus enhanced checks would only be done when a winning occurs.

Correspondent banking, wire transfers and new technologies

433. The banks use correspondent relations for their business, with most of the correspondent banks operating in the SEPA countries. Awareness of and compliance with ECDD requirements with regard to correspondent relationships appear to be in line with the required standards. This was also confirmed by the supervisory work conducted by FIA and CBSM. Banks do not engage into correspondent banking relations with entities established in higher-risk jurisdictions.

434. The banks demonstrated a generally good level of understanding of the ML/TF risks associated with wire transfers and apply appropriate measures to comply with the requirements in relation to collection and provision of beneficiary/originator information. Banks have software that would not allow or block the execution of wire transfers if wire transfer requirements are incomplete or there are hits with sanction-related lists embedded in the software. Some STRs have been reported to the FIA with reference to rejected wire transfers, or to eventual requests of information to foreign banks in relation to attempted wire transfers. The San Marino Poste has a good knowledge of the information to be collected when conducting a wire transfer and would not process a transfer to a high-risk jurisdiction.

435. As regards new technologies, FIs analyse ML/TF risks of new products, services, channels and technologies prior to their introduction. It should be noted that to date no VA services have been authorised and provided in San Marino. Based on the findings of supervision, the process of ECDD detailed in banks' documents on new technologies is complete and accurate. Moreover, the banks have submitted a few STRs in relation to on-line current accounts. There was confusion among DNFBPs regarding the obligations, mainly due to the fact that such new technologies were not being used or considered in their businesses.

Implementation of Targeted Financial Sanctions

436. Most of the FIs use commercial databases to screen their clients against the UN designations and detect funds. The FIA, informs all the OEs of the amendments to the UN lists by email in a timely manner. All the FIs met on-site were aware of the FIA communication and said that they relied upon it. Due to the deficiencies in relation to beneficial ownership identification by smaller FIs, it appears that little is being done to detect funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities. On the other hand, there have been some false-positive matches identified, which demonstrates a positive practice. To date seven STRs have been sent to the FIA, however no freezing has been applied.

437. As regards DNFBPs, (excluding REAs and the San Marino gaming house) they also have in place IT tools for customer screening. The ones that do not have IT tools in place recalled FIA communications but were not clear on their TFS related obligations. In particular, there was no sufficient understanding of the freezing obligations apart from STR reporting. In most of the cases the DNFBPs would refrain from providing services to such clients, while in some instances there was also confusion in respect of the ECDD obligations. In addition, there was a misunderstanding among most of the OEs that freezing obligations would extend to funds only, thus not covering other assets.

Higher-risk countries identified by the FATF

438. The FIs met on-site were aware of the risks associated with customers or transactions related to high risk countries and apply ECDD to customer relationships based in or connected to countries on the lists. They reference both the FATF and FIA websites providing the list of high-risk countries. Moreover, the FIA updates this list periodically and communicates regularly eventual updates to FIs. In addition, they perform their own assessment of country risks.

439. As regards the DNFBPs, they were aware to be alert for the customer's jurisdiction, but not all of the sector representatives were familiar with the list of countries considered high risk by the FATF. The OEs referred to the FIA website and communication instead.

5.2.5. Reporting obligations and tipping off

FIs

440. FIs demonstrated overall a very good understanding of the STRs legal requirements and of tipping off measures. Most of the FIs would rely on the suspicious transaction indicators provided by the FIA to file an STR. At the same time, banks demonstrated that they do not only rely on the

suspicion indicators provided by the FIA but are also able to independently identify suspicious cases outside the scope of those indicators.

441. The total number of STRs received in the period from 1 January 2014 until 30 June 2019 amounts to 901, of which 766 concerned new suspicious activities and 135 concerned additional suspicious activities related to previous STRs sent by the same reporting entity (RE). STRs referred to attempted transactions amount to 90 while those referred to executed transactions amount to 811. Most of the STRs concern ML, while in relation to TF, 7 STRs have been submitted.

442. In the reference period, the number of STRs received from FIs decreased while the number of reports sent by DNFBPs remained substantially constant. Therefore, although STRs have decreased in absolute terms, the average number of STRs per type of main RE category (banks and other financial intermediaries) remained almost constant over the period. The key reasons for such a trend is the decreasing number of FIs.

443. The vast majority of the STRs filed with the FIA are from the banks (about 67%), which is considered to be consistent with its materiality in terms of financial sector assets and the level of exposure to ML/TF risks. Life insurance companies have filed 78 STRs from 2014 to June 2020 (about 8% of total STRs), while FFCs have filed 115 STRs (around 11%). Among other FIs, the number of reported STRs seems to be low as regards asset management companies and insurance and reinsurance intermediaries. This however was assessed by the AT to be commensurate with the size of their business, as well as the inherent risks of those sectors. Information on types of STRs and their consistency with the risks identified is provided under IO6.

444. All FIs understood the risks arising from tipping-off and had appropriate measures in place to prevent it. Provisions on the prevention of tipping-off are also part of the FI's internal procedures.

445. In general, the FIA considers the quality and quantity of the STRs to be good. A general feedback on accuracy, quality and completeness is provided by the FIA to the FIs for each STR. According to the FIs the FIA's feedback on STRs (including on quality) was very prompt. As a result of its supervisory activities, only one case of an unreported suspicious transaction has been detected by the AML/CTF Supervision Unit of the FIA (in 2016) with reference to the legal representative of a Fiduciary Company (almost immediately after dissolved in a compulsory way by the CBSM for prudential reasons). The case was disseminated by the FIA to the JA for suspected criminal violation of the art. 36 (Reporting requirements) of the AML/CFT Law. As regards the tipping-off requirements, in the reference period, (2014-2019, as at 30.06.2020) only one case of tipping-off has been detected (in 2014). As a result, the FIA reported the suspect to the JA in the same year for a violation (the related criminal proceeding has been filed).

446. The FIA has been working to enhance the awareness and abilities of the FIs on their reporting obligations through not only the feedback practices implemented in relation to each STR, but also training and instructions provided to the OEs in this regard. Nonetheless, it seems that further training and awareness-raising measures for FIs other than banks should be applied commensurate with their overall ML/TF risks.

DNFBPs

447. The level of understanding and practical implementation of their reporting obligations varies across the sectors. While the accountants and auditors were clear on their obligations and reporting typologies, this was not confirmed for the rest of the sector. Based on the results of the interviews conducted with the private sector representatives, it appears that DNFBPs do not have an adequate understanding of their reporting obligations. Some of the sectors, namely the REAs and TCSPs would rather contact the FIA to consult on the actions to be taken.

448. Overall, the reporting rates, (compared with FIs) are generally low across all the sectors. The majority of the STRs were submitted by accountants and auditors (61 STRs, which constitute 6% of the total STRs), followed by lawyers and notaries, having filed 26 STRs (about 3%). As for the gaming

house, DPMS and the REAs, very few STRs have been submitted. The reporting rates seem not to be fully commensurate with the sector specific risks they face, especially for the lawyers/notaries who have been identified (by the criminal cases) as more vulnerable to ML/TF risks compared with the rest of the sectors (medium and medium-low risk respectively by the NRA). Similarly, STR reporting rates of real estate sector are considered low by the on-site.

449. The majority of DNFBPs expressed the view that their businesses are unlikely to be vulnerable to ML or TF (in direct contrast to the communicated findings of the NRA). Thus, important steps should be taken to improve understanding of the requirements and risks in the DNFBPs sector. The competent authorities and regulatory bodies indicated that outreach has been and will continue to be organised to ensure that the obligation and the actual practice regarding the quality and quantity of STR reporting is clearly understood and applied. DNFBPs suggested that more guidance in this area is required, particularly sector-specific indicators and examples of suspicious activities. One of the sectors also indicated that there is a lack of communication with the competent authorities.

5.2.6. Internal controls and legal/regulatory requirements impending implementation

FIs

450. FIs have a good understanding of the internal controls and procedures requirements. Banks have adopted an effective internal control system and perform their periodic survey and validation in relation to the evolution of the company's activities and of the relevant context.

451. The FIs have in place the three lines of defence. Based on the legal requirements, the FIs have established an AML Committee and appointed an AML/CFT Officer. FIs allocate adequate resources to overseeing and testing their AML/CFT programmes and are subject to internal audits. They have in place screening programmes for staff on recruitment and also have ongoing training programmes on AML/CFT matters. Financial secrecy does not seem to impede implementation of the AML/CFT requirements.

452. The FIA has issued an Instruction, which requires the FIs to establish an internal organisational function responsible for promptly informing the Board of Directors of any legislative/regulatory AML/CFT interventions, including those related to TFSs and transposing it into the internal regulation and procedures. The FIA verifies the transposition and the effective implementation of the AML/CFT and TFSs requirements by FIs through on-site inspections and off-site supervisions which include the "RBS questionnaires". The information provided by FIs and the on-site inspections by the FIA has highlighted that FIs transpose the AML/CFT and TFS requirements in a timely manner. In this regard, the on-site inspections carried out did not reveal any violations but only improvement requests were made. Whenever there are breaches in application of the internal regulations including on AML/CFT issues, FIs adopt the following remedial actions: reprimand, removal and transfer to another function, suspension and dismissal of the employees.

DNFBPs

453. DNFBPs have less developed internal control systems in place as compared to FIs. They do not have an independent AML/CFT compliance structure because in most cases the majority are sole practitioners or small entities. Some of the lawyers/ notaries and accountants/ auditors, as well as a few DPMS and the San Marino gaming house have appointed AML/CFT Officers.

454. Training has been provided to these sectors by the FIA, as well as their professional associations. As regards the compliance with internal control requirements, the FIA has identified cases of not full compliance in relation to DPMS and accountants. As a result, an AML/CFT Officer from the DPMS sector has been removed.

Overall conclusions on IO.4

455. The AML/CFT legislation in place is very sound and provides a good basis for actual application of preventative measures. At the same time the practice of understanding the ML/TF

risks and obligations, as well as their application, varies across the sectors. Preventive measures are applied by the banking sector to a good extent, while some deficiencies were noted in other sectors. When determining the overall level of effectiveness achieved by San Marino, the AT considered the deficiencies in relation to understanding of ML risks and obligations, and the uneven application of risk-based mitigation measures by highly and moderately important sectors to have a negative impact on the overall level of effectiveness of preventive measures. In particular, issues were identified with regard to the proper application of ECDD, identification and verification of beneficial ownership information by those smaller FIs not forming part of a financial group and most DNFBPs. Further issues appear to be in relation to these OEs compliance with their TFS related obligations. While in general the FIA is satisfied with the quality and quantity of STRs, there is a need for further improvements related to the reporting obligations in compliance with the sector specific risks.

456. San Marino has achieved IO.4 to some extent and major improvements are needed to improve the application of preventative measures.

San Marino is rated as having a moderate level of effectiveness for IO.4

6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

- 1) The registration and licensing of FIs and PTs is conducted by the CBSM. The CBSM performs fit and proper checks of shareholders, BOs and the senior management before granting entry into the market and conducts ongoing assessment of fit and proper requirements. For FIs and PTs the CBSM is required to assess adverse media, the origin of funds and their transparency, which helps to prevent associates of criminals from owning, controlling or managing FIs in practice. However, these requirements are not legally defined *expressis verbis*.
- 2) For DNFBPs a two-pillar market entry control upon registration of companies is performed by lawyers/notaries and the OEA. For DNFBPs, when companies are established, lawyers and notaries undertake CDD measures and collect relevant documentation. The OEA performs controls during the establishment of companies and for natural persons when licenses are issued for economic activity. Checks on DNFBPs during market entry are limited to checks for criminal convictions and pending charges. These are only performed during the registration phase but not on an ongoing basis. No measures are taken by San Marino to prevent associates of criminals from owning, controlling or managing DNFBPs. The lack of systemic controls and a fragmented approach leaves the DNFBP sector vulnerable to potential abuse.
- 3) The FIA acting in its capacity as the AML/CFT supervisory authority for all OEs, has a well-developed and good risk understanding of each of the specific sectors under its supervision.
- 4) The FIA applies a RBA to AML/CFT supervision, in which it prioritizes thematic and targeted on-site inspections for those higher risk areas/products identified in the NRA. In the assessed reference period, the number of on-site inspections for higher risk DNFBPs given the number of market participants is low (from 2014 – 2020, there were 34 on-site inspections for all professions in the sector and 31 on-site inspections for other DNFBPs). Even if the general number of on-site inspections for FIs was thought appropriate, the number of on-site inspections for higher risk FIs is rather low. There were no general on-site inspections for banks from 2014 – 2020. Given the workload, the FIAs does not have sufficient human resources needed to conduct its supervisory activities.
- 5) Neither the CBSM nor the FIA supervise financial groups (domestic and foreign) on a consolidated basis. The risk understanding and supervisory approach is not holistic but is limited to each single entity of the group. Although this deficiency may have limited materiality in San Marino because the financial sector is small and mainly domestic, it may inhibit a full understanding of ML/TF risks arising from the domestic and international holdings of Sammarinese banks and the appropriate management of those holdings.
- 6) The FIA has a range of sanctions available for breaches of AML/CFT obligations but overall the level of fines available and issued are relatively low.
- 7) The need for the market entry of FIs to be controlled, the need for FIs to understand the risks, and the need in general for AML/CFT supervision have all been re-emphasised by recent

cases.⁴⁴ The FIA provides OEs with targeted training and guidance on new practices and areas of higher ML/TF risks on a continuous basis.

Recommended Actions

- 1) The FIA should increase the human resources allocated to supervisory activity to ensure that they are commensurate to the supervisory workload with the aim to increase their supervisory activities for OEs identified as having a higher risk to ML/TF as well as the number and range of on-site inspections to include general on-site inspections in FIs with higher risk taking a RBA.
- 2) San Marino should enhance their market entry controls to prevent criminals and their associates from holding a significant or controlling interest or a management function in DNFBPs and VASPs. In relation to FIs and PTs, San Marino should prescribe in the internal procedures of the CBSM that in relation to performing and enforcing market entry controls for FI's and PTs association with criminals is being assessed.
- 3) San Marino should enhance remedial activities and sanctions available to the FIA. The San Marino authorities should do the following: i) increase the sum of pecuniary penalties to a level that is proportionate and dissuasive, ii) extend the remedial measures to include imposing permanent bans on managers or other persons and revoking authorizations, fully or partially, but with the option of permanently where necessary and iii) provide the FIA with the power to stop or demand certain activities immediately upon penalty payments and in addition to (not instead of) other types of measures or sanctions.
- 4) San Marino should implement consolidated group supervision to ensure that the ML/TF risks arising from domestic and international holdings of Sammarinese banks are fully understood and managed, including the FIA as main supervisory authority should sign MoUs with the relevant supervisory authorities. The CBSM and the FIA should incorporate in their risk assessments the assessment of entity group risks (domestic and foreign groups).

457. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

6.2. Immediate Outcome 3 (Supervision)

458. Based on their relative materiality and risk, implementation issues were weighted as follows: most important for the banking sector, which plays a dominant role in San Marino (holding 88 percent of total assets); highly important for the fiduciary companies and mandates, life insurance companies, lawyers/notaries, accountants/auditors, DPMS and the San Marino gaming house; moderately important for the asset management companies, payment company and real estate sector; less important for the insurance intermediaries, TCSPs, San Marino Poste. Although VASPs are defined under AML law as reporting entities, no domestic or foreign VASPs have been registered to date. This is explained in Chapter 1 (under materiality).

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

Financial sector

459. The core principle institutions, other FIs and MVTS are required to be authorised by the CBSM to provide financial services in San Marino. The CBSM verifies fit and proper requirements for all

⁴⁴ Reference to IO.1, *Conto Mazzini* case.

these authorised entities. Law 165/2005, together with the relevant sector specific CBSM Regulations, set these general principles and specific requirements for the overall authorization process and fit and proper requirements for the following: 1) new establishment of a FI, 2) acquisition of a qualifying holding in the capital company of an already authorized entity, and 3) new or existing appointment of senior management within authorized parties (see R.26).

460. When checking the good repute of the owners who substantially participate in FIs, the CBSM verifies the provision of criminal record certificates, information on any pending charges, and confirms that there have been no administrative penalties imposed for actions taken as a corporate officer over the last 5 years. The applicant must provide self-declarations of his/her good repute and sound and proper management that have been authenticated by a public notary. The applicant authorises the CBSM to conduct on the premises of the appropriate offices such verification procedures as the CBSM deems appropriate for ascertaining the truthfulness of the declarations.

461. In the case of applications for the new establishment or acquisition of qualifying holdings the CBSM assesses both the source of funds and the transparency of the jurisdiction where the applicant resides. With respect to the BOs of an applicant, the CBSM carries out checks regarding the source of wealth of the ultimate BO. Moreover, in relation to sound and prudent management checks, the CBSM carries out both in-depth reviews of the business plan submitted by the applicants and analyses the viability of applicant's business model. In order to verify potential economic ties, the applicant submits an information note explaining their economic and financial condition and the source of financing used to purchase the ownership interest. A disclosure of any economic relationships in particular, regarding those involving debt, existing between the applicant and the FI or other equity shareholders, must be made. According to the off-site inspection manual, adverse media is checked during market entry by CBSM, if any negative information is found, further controls are applied. If the controls do not overcome the negative information, then market entry is not granted. Although, the CBSM Regulations and internal offsite inspection manual do not prescribe *expressis verbis* a standalone requirement to determine association with criminals or to decline market entry based only on this, in practice this could be performed by the sound and prudential management assessment and adverse media checks and market-entry for associates of criminals could be refused.

462. During the on-site interviews the authorities could not explain what other checks they performed in practice to determine any possible non-criminal association with criminals of potential applicants, other than an assessment of the origin and transparency of funds. They also noted that potential non-criminal association with criminals would not be used on its own, as a legal ground to decline market entry. Therefore, whereas market-entry for associates of criminals could be used in practice, the market entry controls may not always be reliably effective.

463. Fit and proper requirements (good repute, professionalism and independence) are also verified for persons holding offices of administration, management or control within authorized parties in case of new appointment of officials. The CBSM monitors on an ongoing basis whether requirements of good repute, professionalism and independence are met by the persons holding offices of administration, management or control within authorized parties. In case fit and proper requirements are not met, the CBSM has the power of removal from office. In San Marino associates of criminals are prevented from holding a management function, in a FI if a) they are convicted of criminal offences themselves or are subject to ongoing criminal proceedings, and b) such association is apparent from documents provided or verified. However, as with acquiring ownership interest, legislation and internal documents do not prescribe *expressis verbis* a standalone requirement to determine association with criminals and to refuse holding offices of administration, management or control in a FI. Associates of criminals may be prohibited from holding offices of administration, management or control in a FI in practice through a sound and prudential management assessment and adverse media checks, but this may not always be reliably effective without a clear requirement to do so.

464. The authorization process is managed by the CBSM's off-site supervision unit which completes the analysis and performs those checks required by the Law and the CBSM Regulations. The CBSM has an internal offsite inspections manual which describes how these checks should be performed. Some common understanding exists on which documentation should be verified and what cooperation should be requested with which domestic authorities. Although the off-site inspection manual outlines procedures for performing fit and proper checks, from the on-site interviews it was understood that the application of different criteria is rather flexible. As there are not that many cases for acquisition of holdings and new applications for FIs in San Marino, the CBSM does not have a dedicated staff who deal exclusively with authorisation and licensing. All applications are processed by the supervision unit, reviewed and verified before the final decision by the supervision committee. As the CBSM meets with potential applicants upon request to discuss requirements, not all potential applications lead to formal requests to issue a licence. The CBSM has declined applications for licences due to non-compliance with the fit and proper requirements.

465. The CBSM signed a MoU with the FIA in 2012 on cooperation in the furtherance of their respective institutional aims. This MoU includes cooperation in the area of establishing good repute with suitable senior management and ownership structures of FIs. The MoU includes the sharing of operational information on a reciprocal basis on possible infringements or circumstances relating to ML/TF. In accordance with the MoU, when the CBSM deems it appropriate to make further inquiries, during fit and proper assessments, the CBSM can require information from the FIA on the legal and non-legal persons involved, whether residents of San Marino or non-residents. The FIA in turn sends requests to foreign FIUs where diagonal cooperation is necessary to establish the reputation of persons involved in FIs. Between 2014-2020 (as at 30th of June), a total of 4 requests were addressed to the FIA which required cooperation with 10 foreign FIUs. CBSM also addressed one request to a foreign supervisory authority directly concerning fit and proper measures.

466. Between 2014 – 2018 there were a total of 27 applications in relation to the acquisition of a qualifying holding, of which 6 applications were denied. In addition to initial checks, the compliance of shareholders and BOs with such requirements is verified at least on a periodic basis (e.g. every three years for banks, FIs, payment and e-money institutions and for PTs). The number of periodic checks made by the CBSM on good repute and sound and prudent management requirements (2014 – 2020 (as of 30th of June)) seems appropriate in the context of San Marino and is described in the following table:

Table 30 Number of periodic fit and proper checks (from 1 January 2014 until 30 June 2020)

	Banks	Financial/ Fiduciary companies	PTs	Management companies *	Payment Institutions *
Number of periodic checks (ongoing)	72	18	39	NA	NA
* compliance of shareholders/BOs of management companies and payment institutions is ensured by checking the same subjects in the banks that own 100% of share capital of the above-mentioned companies.					

467. During the period of assessment, 3 senior members of the management board of FIs have been removed due to the legal and reputational risk for their institutions. In 2019 a Chairman and a General Director of two different FIs were removed. Senior officials were removed in one case as a result of the CBSM supervisory activity described below.

CASE STUDY 1: Removal of senior member of management in an authorized entity

The CBSM acquired information regarding non effective governance in an authorized entity, mainly due to the difficulties inside the Board of Directors. The CBSM promptly started a specific, focused, on-site inspection, in order to identify any potential obstacles to the effective management of the authorized entity and to detect the factors responsible for the potential deficiencies identified.

The on-site inspection report highlighted many difficulties in the governance by the Board of Directors, mainly attributable to the actions of the Chairman of the Board, who, *inter alia*, acted out of his role, managed directly part of the internal structure of the authorized entity, overcoming the General Director; tried to force his own decisions on specific matters instead of leaving those decisions to the internal control units.

The inspection team also detected a potential reputational and legal problem for the authorized entity from the behaviour of the Chairman which could lead to liquidity and operational risks.

After the formal approval of the on-site Supervisory Report, the CBSM started the procedure for suspension of the Chairman of the Board but as a result of a meeting with the shareholders to introduce the outcomes of the inspection, the shareholders replaced the Chairman at a shareholders' meeting.

CASE STUDY 2: Removal of senior members of management in an authorized entity

At the end of 2018 the FIA made the CBSM aware of a financial transaction between an authorized entity and a non-resident PEP as a client. The communication included information potentially related to prudential supervision.

The CBSM collected further information on the authorized entity and identified potential risks related to the operation. The CBSM also initiated an on-site inspection to further analyze the data collected, specifically regarding two senior managers, due to their involvement in the transaction. All CBSM activities were executed in coordination with the FIA.

After the inspection, the CBSM received a specific request for documents from the Court, related to MLA request from a foreign jurisdiction.

Given all of the above, the CBSM met the authorized entity and formally requested an immediate suspension of the two senior managers due to their involvement in the transaction although neither were under investigation in the foreign criminal proceedings, in order to mitigate the legal and reputational risks of the authorized entity. The Board of Directors of the authorized entity fired the two senior managers.

468. In relation to monitoring whether restricted activity is being conducted without a license, all employees of the CBSM, as public officials, must promptly report any abuse of reserved activities to the Court through the Supervision Committee⁴⁵. No information was provided on, whether the law imposes a specific 'proactive' obligation on the San Marino authorities to identify natural or legal persons that engage in MVTs, or any other regulated activities, without license or authorisation. This may lead to the un-detected provision of unregulated activity of MVTs or other financial services but

⁴⁵ The Supervision Committee is empowered to manage the supervisory functions of the banking, financial and insurance system of the Republic of San Marino, in its three components of inspection, reporting and regulation, and also with the protection of investors. The Supervision Committee consists of the Director General, who chairs the Committee, and of the Central Bank inspectors.

based on the size of the financial market of San Marino the risk of un-detected provision of unregulated financial activities for longer periods seems relatively low.

469. PTs (trustees, who act on behalf of more than one trust) and FFCs, when performing fiduciary shareholding activities, have to be registered by the CBSM in order to operate. Anyone carrying out fiduciary shareholding activities in an entrepreneurial and professional form (organized and for profit purposes) without CBSM authorization and supervision commits the crime of abuse of the fiduciary activity as a result of the combined provisions of Art. 3, letter c) of the Annex 1 and Art. 134 (1) of the Law on Companies and Banking, Financial and Insurance Service (LISF). The process for application of registration is regulated by relevant CBSM Regulation. The processing of the application, including prohibition of entry to market of criminals and their associates is the same as described above for authorized entities.

DNFBPs sector

470. In San Marino, gambling is forbidden, which means that operating casinos including internet casinos is prohibited. Betting, running of games, prize contests, lotteries, lotto and games of chance are allowed. Currently there is only one authorized entity providing such services in San Marino. The exclusive operation of games is the responsibility of the Public Institution for Gaming Activities and is carried out through contracts with private law companies where San Marino is the majority shareholder upon authorisation by the Congress of State. These contracts have a maximum duration of five years and are renewable. Criminals or persons with a conflict of interest are prohibited from holding certain positions, including that of member of the Governing Council. Private companies where San Marino is the majority shareholder that may provide allowed gaming services are subject to requirements of good repute for the company's shareholders and managers. The holder (or BO) of a significant or controlling interest for both entities is San Marino. Association with criminals is not checked specifically, but based on the fact, that there is only one obliged entity in this sector authorised and operating in San Marino which is also majority-owned by the state, the risk of market entry of criminals and their associates is lower than for other DNFBPs.

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

472. REAs acting as self-employed persons are subject to similar controls. Aside from professional requirement checks auditors and auditing firms are subject to criminal record and pending charges controls. Accountants, lawyers and notaries are banned from the profession if they have certain criminal or disciplinary offences. Although, market entry controls are the responsibility of lawyers/notaries and the OEA, the FIA performs checks during the market entry phase by screening the obliged entity (legal or natural person) and associated names (directors and AML/CFT Officers) against adverse media lists and other lists (including UN lists). These checks by the FIA are done on an *ad hoc* basis and there are no systemic measures in place by the OEA to perform fit and proper checks on an ongoing basis.

473. The controls during market entry for checking any association of DNFBP with criminals are limited to checks on criminal convictions and pending charges. Non-criminal association with criminals may be discovered through "unfit person" checks, adverse media checks by the FIA or other types of *ad hoc* checks. No information (e.g. internal procedures, guidelines, common practice or anything confirming a shared understanding and application of the legislation) was provided to

confirm the existence of a unified approach as to what constituted association with criminals and how any such behaviour would be controlled in practice. The lack of a unified approach makes the DNFBP sector more vulnerable to control by persons, whose association with criminals is not revealed through criminal records or pending charges. Even in circumstances where non-criminal association with criminals would be identified through adverse media or other types of *ad hoc* checks, no evidence was provided that such an association would be used to decline entry to market on a stand-alone basis. The market entry controls should therefore be enhanced to be more effective at preventing criminals and their associates from potentially owning, controlling or managing DNFBPs. Whilst some of the DNFBP sectors are not considered as high risk (REAs, TCSPs), lawyers/notaries, accountants/auditors and DPMS are highly important in the context of materiality.

VASP sector

The VASP sector is subject to AML/CFT requirements under AML/CFT Law as OEs belonging to the group of non-financial entities. At the moment of the on-site there were no VASPs registered and no VASPs operating in San Marino. The legal framework on market entry governing VASPs and Blockchain Entities is described under criterion 15.4, where the San Marino Innovation carries out some due diligence process and registration. VASPs that are natural persons and thus not covered by DD should only register with the FIA and there are no other control measures for these VASPs. As no VASPs are currently registered in San Marino, the risks related to any deficiencies identified in licencing, registration and controls would be of low materiality for the purposes of this effectiveness assessment.

6.2.2. Supervisors' understanding and identification of ML/TF risks

CBSM

474. The understanding of ML/TF risks by the representatives of the CBSM is confined to their function as prudential supervisors. CBSM has an adequate ML/TF risk understanding considering their limited role in the AML/CTF supervision performing and enforcing market entry controls for FIs. The CBSM uses the 2019 NRA for understanding the ML/TF risks, and the data collected from prudential supervision for determining its strategic plan. The CBSM uses the FIA's strategic analysis when defining its strategic plan. The CBSM has participated in both iterations of the NRA, in particular for the "fit and proper" regulations.

475. The CBSM identified the banking sector as having the highest risk with complex structures of shareholders and the lack of transparency of assets or funds as the most common risk indicator for market entry of FIs. For the purposes of prudential supervision and where it is related to AML/CFT matters, the CBSM does not holistically consider the risk of financial groups, whether domestic or international. San Marino has one operational domestic financial group consisting of a parent bank and a subsidiary insurance legal entity, a financial fiduciary legal entity, a trustee legal entity and a real estate legal entity. In relation to international banking groups one San Marino bank wholly owns and exercises control over a foreign subsidiary in Croatia with a banking licence and is registered as a financial group by the CBSM. The CBSM signed a MoU in 2009 with the Croatian Supervisory Authority in order to carry out supervision of the foreign subsidiary. No information was provided to the AT on any cooperation in respect of this supervisory activity.

FIA

476. The FIA derives its understanding of ML/TF risks from its activities as the coordinating authority and author of the 2019 NRA, as the FIU of San Marino and as the designated supervisory authority for ML/TF compliance by OEs. The risk understanding of the FIA is reflected in the findings of the 2019 NRA. As an AML/CFT supervisory authority, the FIA has a thorough and integrated understanding of the AML/CFT risks faced by supervised subjects. In order to assess the ML/TF risks

of the financial system and each separate sector, the FIA uses a variety of qualitative and quantitative data and information from different sources (see IO.1). Information received from STR reporting, the annual reports of AML/CFT officers of OEs and the outcomes of its own strategic analysis are supplemented by reports from FIs such as the WCS. This survey reports the number of foreign customers, foreign BOs of domestic legal persons, the value of their incoming and outgoing funds (which includes cash payments, wire transfers, chased cheques and other operations) and the movement of funds between San Marino and foreign jurisdictions through wire transfers.

477. The FIA has a good understanding of the ML/TF risk exposure of the sectors under its supervision. This is achieved by using the AML/CFT RBS Tool (i.e. “RBS Tool”) with the aim of detecting the most vulnerable AML/CFT areas. The RBS Tool is a mechanism for collecting information from all OEs (initially FIs and subsequently DNFBBPs) and for analysing the outcome by the FIA. It is mainly based on data gathering and data analysis of off-site questionnaires submitted electronically to all OEs (and in particular to a FIs’ Board of Directors, Board of Auditors, Senior Management, AML/CFT Officer, Risk Managers, Compliance Officers, Internal Auditors). Information and data acquired through AML/CFT off-site supervisory activities based on *ad hoc* surveys as well as any results of AML/CFT on-site supervisory activities also form part of the FIA’s risk understanding. The limited use of full-scope on-site inspections in those OEs with the highest risks may limit the FIA’s ability to develop a comprehensive assessment of existing systemic risks and deficiencies in a holistic manner in those sectors of the highest risk (see analysis in section 6.2.3).

478. The questionnaires are periodically sent through the FIA’s STR-WEB portal (for FIs) and with other specific login credentials for DNFBBPs. The questionnaires are biannual and some sections are updated more frequently depending on those risk areas identified by the FIA. These electronic questionnaires are tailor-made for each category of FIs and DNFBBPs and are concerned with compliance with AML/CFT requirements and (effective) enforcement of such obligations. The RBA Tool forms an integral part of the 2019 NRA. However, the RBA Tool does not consider financial groups and their potential ML/TF risk exposure.

479. The most relevant risk factors carrying a higher weight in determining entity specific ML/TF risk for the FIA’s AML/CFT supervision relate to the OE’s customer base. For example, a higher risk is attributed to an entity with clients and BOs who are PEPs or have complex company and legal arrangements of a non-transparent legal form or are established in high-risk jurisdictions. Similarly, the FIA takes into account the risk factors related to the type of transactions executed by the OEs on behalf of their customers, such as relevant cash transactions, and transfers to and from high-risk countries. Risk factors relating to STR reporting obligations such as over-reporting or under reporting, adverse news relating to customers of OEs. Previous violations of AML/CFT obligations and enforcement measures applied in the past are all taken into consideration when determining the risk score for each entity. As with the CBSM, the FIA does not assess the AML/CFT risk of a financial group as a whole but focusses on each separate entity. For domestic groups, due to the small size of San Marino’s financial sector this issue has limited materiality.

480. For the purposes of AML/CFT supervision, the FIA cooperates and exchanges information effectively with different authorities. Disclosures from the CBSM, LEAs, OEA, OCA and professional associations, rogatory letters and criminal investigations in relation to customers or FIs and request from foreign FIA are considered when assessing ML/TF risks and adjusting the yearly supervisory plan.

San Marino Innovation

481. The ML/TF risks associated with the VASP sector are not assessed systematically in the 2019 NRA. Nevertheless, the authorities have carried out a risk assessment relating to VASP/blockchain entities analysing the licensing/regulation/authorization process and the necessary legislation. The sector is subject to AML/CFT requirements as OEs but this risk assessment is not detailed enough (see Recommendation 15 and IO.1). Currently no VASPs have been registered in San Marino so the materiality of such deficiencies has a very low impact on the overall level of effectiveness.

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

CBSM

482. The CBSM is the prudential supervisory authority for banking, financial and insurance services in San Marino. The activities of the CBSM involve the promotion of the stability of the financial system and the protection of savings through supervision of credit, financial and insurance activity. The CBSM has power to regulate banking groups on a consolidated basis and the law provides for a register of a banking group. In practice, the CBSM does not undertake consolidated supervision of its subjects.

483. In relation to cooperation between the CBSM and the FIA and the coordination of their supervisory measures: both the FIA and CBSM have responsibilities for enforcing compliance with AML/CFT obligations and they have signed a Memorandum of Understanding. They share information and coordinate their enforcement efforts through joint on-site inspections. They share detected ML/TF violations. Case studies below describe a joint supervisory activity.

CASE STUDY 3: The CBSM and FIA joint supervisory activity

Joint CBSM-FIA on-site supervisory activity was carried out in 2015 at an FFC. This activity was initially undertaken by the CBSM in the context of its prudential supervision, but, having identified potential AML/CFT violations, the CBSM requested the intervention of the FIA; the FIA's general on-site inspection led to the application of sanctions against the directors and the Board of Auditors of the FFC concerned (total €82 600);

CASE STUDY 4: The CBSM and FIA joint thematic study

In 2019, a joint thematic study was carried out on the use of cash (in the period 2010-2018) in San Marino system. This study analysed the amount of cash deposited and withdrawn during that period, the trend of cash being provided to banks by the CBSM in order to support their liquidity needs. As part of this analysis, the FIA and CBSM jointly analysed the cash transactions carried out by the banks' customers during the year 2018 as recorded in the AIA "Archivio Informatico Antiriciclaggio" in which are recorded transactions equal to or greater than enhanced customer due diligence (€15 000). No anomalous transactions were found that required specific in-depth analysis. There was a steady decrease over the years in the use of cash in the banking system. A progressive decrease in the average amount of transactions was also noted.

FIA

484. The FIA supervises AML/CFT compliance of all OEs, FIs and DNFBPs, by adopting a RBA. Based on its assessment of ML/TF risks to which OEs are exposed, the FIA establishes the frequency and intensity of supervision of such entities. As described above in the case of the CBSM, in practice there is no consolidated group supervision and all entities belonging to the same financial group (foreign or domestic) are considered separately and supervised independently. In the case of domestic groups, due to the small size of the San Marino's financial sector, this issue has limited materiality. In the case of foreign groups, the FIA's cooperation with the foreign supervisor in relation to ML/TF joint supervision could be more enhanced. San Marino should explore ways to broaden cooperation with Croatian supervisory authorities.

485. The supervision of FIs and DNFBPs is based on the Supervisory Plan and triggering events. The Annual Supervisory Plan is prepared by the Management of the FIA and it is based on ML/TF risk factors, NRA results and a RBS Tool. The supervisory plan takes into account emerging factors, categories of OEs considering their materiality and the need for on-site follow-up activities.

486. The Supervisory Plan is amended if, for example, *ad hoc* inspections are necessary after trigger events. The Supervisory Plan is confidential and is disclosed only to persons who need to know

within the FIA. On-site inspections themselves are made unannounced. The San Marino authorities have presented several cases, where information received from STRs and disclosures from public authorities, including the CBSM have triggered a supervisory event (see examples in following box).

CASE STUDY 5: Initiation of supervisory activities based on STRs

Following a receipt of a STR by the FIA sent by a FI, the FIA carried out a targeted on-site inspection with regard to a DPMS (established in the form of a company), whose customer was involved in the purchase of gold coins and was referred to in the STR. The inspection revealed that the DPMS failed to comply with some AML/CFT obligations and requirements. The FIA imposed sanctions for violations concerning: CDD requirements, on-going monitoring, risk profiling, PEP identification and record-keeping requirements. The FIA also sanctioned the lack of employees' AML/CFT training and the lack of AML/CFT controls by the AML/CFT Officer. The total amount of sanctions imposed was €50 000. The FIA also imposed sanctions for a violation related to the use of cash over the limit stated by the AML/CFT Law. The sanctions were imposed on the sole Director and on a customer, each for about €1 000. Considering the violations detected and the limited AML/CFT controls, the FIA removed the AML/CFT Officer and requested the DPMS to restructure further AML/CFT processes and procedures.

CASE STUDY 6: Initiation of supervisory activities based on disclosures from public authorities

The CBSM disclosed to the FIA an alleged AML/CFT violation, identified in a bank during CBSM off-site supervisory activity. The disclosure focused on transactions concerning investment products provided (to the customers of the bank) by an asset management company owned by the same bank. The CBSM expressed doubts about the correct application of CDD procedures. The FIA carried out an on-site targeted inspection in the bank and detected customer risk profiling and CDD infringements. A senior manager of the bank and the bank itself were sanctioned each for an amount of €8 000. The FIA issued Instruction No. 002 of 19 April 2018 (Series: Financial Subjects) requesting – among other provisions – the assignment to each customer of a dedicated client manager, in charge of AML/CFT on-going monitoring of its business relationships. The FIA also requested the bank to enhance its internal control systems.

487. The FIA's supervisory plans for the period 2014 – 2019, from 2016 onwards take into consideration the results of the 2015 NRA. The supervisory plan is defined in "*General Principles and Operational Manual of AML/CFT Supervisory Activities*" (hereinafter the Supervisory Manual) which it takes into consideration: i) the supervisory activities carried out in previous years, ii) the number of OEs in each sector, iii) the general timetable, iv) the resources available, v) other projects involving the staff of the AML/CFT Supervision Unit, vi) general principles of effectiveness and efficiency. The supervisory activity, as seen from the plans provided, is based on those sectors and activities, which have presented a higher risk in the NRA or on trigger events and not on the risk classifications of specific OEs to be supervised. The AT is of a view that the FIA's supervisory plan is risk-based, taking into consideration extraordinary events or triggers, and appropriate as such but there is room to extend the RBA in the supervisory plan to include and take into account the risk levels of individual OE or groups of OEs to be supervised.

Off-site supervisory measures

488. Off-site inspections are carried out by the FIA obtaining periodic surveys from OEs in order to verify ML/TF trends and exposures to ML/TF risks. This information is used to direct risk-based supervisory activity, for example, the annual WCS,⁴⁶ the AML/CFT Officers Annual Report and RBS questionnaires aimed at collecting such information. RBS questionnaires are sent biennially to all

⁴⁶ World Country Survey is offsite supervisory tool also used for the purposes of NRA.

OEs, to FIs (banks, FFCs, securities, insurance companies, insurance and reinsurance intermediaries and payment institutions) and to DNFBPs.

489. From the analysis of the results of RBS questionnaires the FIA carried out off-site supervisory activities in OEs on the AML/CFT areas as described in the Table 31. In the period 2014 – 31st August 2020 the FIA conducted: two annual AML/CFT off-site supervisions (WCS; AML/CFT Officer Annual Report) for each year considered; one biennial AML/CFT off-site inspection (RBS Tool questionnaires) and 14 ad hoc off-site supervisions (12 in FIs and 2 in DNFBPs).

Table 31 number and typology of *ad hoc* off-site inspections

Year	Offsite inspection typology	Sectors
2015	Cash survey in relation to cash transactions carried out by DNFBPs (in the previous year) the aim to detect the most relevant flows and conduct targeted on-site inspections (targeted on-site inspections have been conducted on a Bank and a FFC in 2016)	Banks, FFC
2017	Gathering of information on “virtual cash” transactions with the aim to carry out on-site inspections	Banks, FFC
	Survey on professional activities, type of customers, the controls carried out and the training of employees	Lawyers and Notaries, Accountants and Auditors
	Survey on fulfilment of requirements in relation to safe deposit boxes opening compulsory with the aim to carry out subsequent Thematic on-site inspections	Banks
2018	Analysis of data contained in CBSM’s supervisory reports on cash transactions with the aim of carrying out a subsequent cycle of FIA’s Thematic on-site inspections on banks during 2018	Banks
	Questionnaire on the restructuring of the AIB compilation and validation procedure (AIB/Anti-money laundering information bulletin is a set of information filed in the FIs’ IT system referred to main data and information on the customer, on his financial profile and on his main transactions	Banks
2019	Request for additional information on CDD requirements originally provided by banks in the RBS questionnaires	Banks
	Request for additional information on on-going monitoring requirements originally provided by banks in the RBS questionnaires	Banks
	Drill down analysis on the direction of funds coming in and out of San Marino by banks, compared with trade base info (Import/Export)	Banks
	Questionnaire on Restrictive Measures in order to acquire information on the operating procedures of banks and on the adoption of the related FIA Instruction on this subject (FIA Instruction: Series FIs n. 007 of 22 November 2019)	Banks
2020*	Request to a bank for the internal regulations adopted in relation to tasks of the AML/CFT Officer and about the functioning of the AML/CFT internal control systems	Banks
	Request to a bank for documents and information in order to verify the internal reporting process	Banks
	Request to FIs (with the exception of Insurance and Reinsurance Intermediaries, Poste San Marino and Payment Institution) for internal regulations and process adopted on TFS in relation to the provisions of	Banks, FCC,

	Law n. 57 of 29 March 2019 and FIA Instruction: Series FIs n. 007 of 22 November 2019	Asset Management Companies Life Insurance Companies
* As at 31.08.2020		

490. Similarly, the FIA can obtain *ad hoc* information useful for the preparation of on-site inspections (i.e. acquisition of detailed information on data already transmitted in the context of previous off-site supervision). The results of off-site inspections are used as a basis for further on-site inspections, when they provide triggering information. This has been shown in practice as described in Table 33, where two thematic on-site inspections took place in 5 banks in 2019 in relation to a previous cycle of off-site supervisory activities. As part of off-site supervisory measures, the FIA also periodically obtains information with the aim of verifying the adoption of the corrective measures required by the FIA in order to remove the vulnerabilities that emerged during previous on-site inspections and/or off-site supervision (i.e. “off-site follow up”). Topics of *ad hoc* off-site supervision are outlined in Table 31. For the purpose of collecting information and data on the OE the FIA uses off-site supervisory tools at its disposal effectively.

On-site supervisory measures

491. The FIA has the ability to use general, thematic, targeted and follow-up on-site inspections, as defined in the AML/CFT Supervisory Policy. The General on-site inspections are aimed at verifying the general compliance by the OEs with provisions set forth in AML/CFT Law, FIA Instructions and Circulars, in the context of AML/CFT requirements, countering PF and correct application of TFSs (and the correct functioning of AML/CFT controls adopted) which concern the overall business situation of the OEs. Thematic on-site inspections are aimed at verifying compliance by several OEs with AML/CFT obligations in relation to a specific regulatory or legislative aspect. Targeted on-site inspections are aimed at obtaining data and information on a specific customer, business relationship and/or transactions and they are performed after a triggering event. The follow-up on-site inspections are aimed at verifying the effective adoption of the corrective measures required by the FIA in order to remove the vulnerabilities that emerged during previous on-site inspections and off-site supervision. The duration of each on-site inspection depends on the extent of the subject matter and on the entity under supervision. The timeframe varies from two months for a general inspection in a bank to 2 days for a targeted inspection.

492. Between 2014 – 2020 the FIA conducted 99 AML/CFT on-site inspections on banks, of which 32 were targeted. These include inspections carried out on CBSM as obliged entity, i.e. when it establishes business relationships or carries out occasional transactions that require the fulfilment of AML/CFT obligations. For non-bank FIs, the FIA conducted 18 on-site inspections to FFCs, 3 on asset management companies, 2 on insurance companies, and none on Payment Institutions and San Marino Poste that provides payment and money transfer services. In relation to DNFBBs 18 on-site inspections were made on lawyers and notaries, 16 to DPMS, 16 to Accountants and Auditors and 5 to REAs. The number of on-site inspections carried out in each category of OEs may be seen from Table 32.

Table 32 Number of general, targeted, thematic and follow-up on-site inspections

Number of On-Site Inspections									
OEs	Inspections' Typologies	2014	2015	2016	2017	2018	2019	2020*	Total
	General	0	0	0	0	0	0	0	0

Number of On-Site Inspections										
OEs	Inspections' Typologies	2014	2015	2016	2017	2018	2019	2020*	Total	
Banks (including CBSM)	Thematic	13	7	4	15	5	17	0	61	99
	Targeted	9	2	4	8	4	3	2	32	
	Follow-up	0	0	0	0	6	0	0	6	
FFCs	General	0	1	0	0	0	0	0	1	18
	Thematic	5	0	1	0	0	2	0	8	
	Targeted	3	0	2	1	1	0	0	7	
	Follow-up	1	0	0	0	1	0	0	2	
Asset Management Companies	General	0	0	0	0	0	0	0	0	3
	Thematic	3	0	0	0	0	0	0	3	
	Targeted	0	0	0	0	0	0	0	0	
	Follow-up	0	0	0	0	0	0	0	0	
Life Insurance Companies	General	0	0	0	0	0	0	0	0	2
	Thematic	1	0	0	0	0	0	0	1	
	Targeted	0	0	1	0	0	0	0	1	
	Follow-up	0	0	0	0	0	0	0	0	
Insurance and Reinsurance Intermediaries	General	0	1	0	0	0	0	0	1	32
	Thematic	0	0	0	0	0	0	0	0	
	Targeted	0	0	0	0	31	0	0	31	
	Follow-up	0	0	0	0	0	0	0	0	
Payment Institution	General	NA	NA	0	0	0	0	0	0	0
	Thematic	NA	NA	0	0	0	0	0	0	
	Targeted	NA	NA	0	0	0	0	0	0	
	Follow-up	NA	NA	0	0	0	0	0	0	
Poste San Marino	General	0	0	0	0	0	0	0	0	0
	Thematic	0	0	0	0	0	0	0	0	
	Targeted	0	0	0	0	0	0	0	0	
	Follow-up	0	0	0	0	0	0	0	0	
Lawyers and Notaries	General	1	0	0	0	0	0	0	1	18
	Thematic	0	0	0	2	2	6	0	10	
	Targeted	2	0	4	0	0	0	1	7	
	Follow-up	0	0	0	0	0	0	0	0	
Accountants and Auditors	General	0	0	3	0	0	0	0	3	16
	Thematic	0	0	0	2	2	0	0	4	
	Targeted	0	0	9	0	0	0	0	9	
	Follow-up	0	0	0	0	0	0	0	0	
TCSPs	General	0	11	0	0	0	0	0	11	13
	Thematic	0	0	0	0	0	2	0	2	
	Targeted	0	0	0	0	0	0	0	0	
	Follow-up	0	0	0	0	0	0	0	0	

Number of On-Site Inspections										
OEs	Inspections' Typologies	2014	2015	2016	2017	2018	2019	2020*	Total	
REAs	General	0	0	0	0	0	5	0	5	5
	Thematic	0	0	0	0	0	0	0	0	
	Targeted	0	0	0	0	0	0	0	0	
	Follow-up	0	0	0	0	0	0	0	0	
Providers of service related to games of chance and gaming houses	General	0	0	0	0	0	0	0	0	1
	Thematic	0	0	0	0	0	0	0	0	
	Targeted	0	0	0	0	0	1	0	1	
	Follow-up	0	0	0	0	0	0	0	0	
DPMS	General	0	0	1	5	0	2	0	8	16
	Thematic	0	0	0	0	0	0	0	0	
	Targeted	0	1	2	4	0	0	0	7	
	Follow-up	0	0	0	0	0	1	0	1	
	Follow-up	NA	NA	NA	NA	0	0	0	0	
Consultancy Entities on administrative, tax, financial and commercial matters	General	0	0	3	0	NA	NA	0	3	3
	Thematic	0	0	0	0	NA	NA	0	0	
	Targeted	0	0	0	0	NA	NA	0	0	
	Follow-up	0	0	0	0	NA	NA	0	0	
Total										226

493. Given its limited size and available human resources, the FIA prioritized thematic on-site inspections over general inspections, which require considerable time and human resources and would limit the FIA's supervisory activity to covering just a few OEs in any given year. This can be seen from the low numbers of general inspections observed in the table above. This approach enables the FIA to cover higher risk sectors and to verify higher risk FIs' compliance with AML/CFT requirements several times a year. On the other hand, conducting no general (full-scope) inspections in OEs with the highest risks (banks) and very limited number of onsite inspections in OE's with higher risk may limit the FIA's ability to develop a comprehensive view of existing systemic risks and deficiencies as well as the level of effectiveness of AML/CFT systems and controls in a holistic manner in the highest risk sectors.

494. The thematic on-site inspections (based on "macro-areas"/"thematic areas" approach) have allowed the FIA to carry out on-site thematic inspections covering high risk FIs (mainly banks) almost at the same time, on those areas which the FIA has identified as higher risk in the 2015 NRA (see Table 33). In relation to the FFC and insurance sector identified as being exposed to medium ML risk, the FIA has conducted very limited amount of thematic and general on-site inspections.

495. The findings of the thematic on-site inspections for the FIs only reveal one violation on the topic of companies established in countries, jurisdictions or territories in which beneficial ownership information transparency is limited (see Table 33). The FIA has issued improvement requests to FIs based on the findings of thematic on-site inspections, which means that the instances of non-compliance with AML/CFT obligations were minor.

Table 33 Thematic on-site inspections

Year	Object of Inspection	OEs inspected	No of violations
2014	Staff training obligations as provided for by art. 44 paragraph 3 of the AML/CFT Law and Instruction no. 2012-02; Obligation to establish suitable control procedures on the correct sealing and functionality of the AIA; Obligation to annually review processes and assess the adequacy of the AML/CFT Officer	5 Banks 3 FFCs 1 Insurance Company 3 Asset Management Companies	No violations were detected, only improvement requests were made.
2014	Verify the conduct of the financial entity regarding the management of massive requests forwarded by the FIA. In this context, checks on the fulfillment of the obligations provided by FIA Instruction 2010-03.	8 Banks 2 FFCs	No violations were detected.
2015	Obligations provided for by art. 29, paragraphs 1 and 2, of the AIF Instruction 2012-02.	7 Banks	No violations were detected, only improvement requests were made.
2016	Companies established in Countries, Jurisdictions or Territories in which beneficial ownership information transparency is limited.	4 Banks 1 FFC	One violation was been detected.
2017	Conclusion of the thematic inspection cycle described above on the remaining Banks.	3 Banks	
2017	"Virtual cash" , which is a transfer operation from one account to another account held by the same customer within the same bank, recorded as a cash deposit and a withdrawal of cash without the physical movement of cash.	7 Banks	No violations were detected.
2017	Correct fulfilment of AML/CFT obligations in relation to safe deposit boxes at banks compulsory opened as set by art. 95 bis of the AML/CFT Law.	5 Banks	No violations were detected.
2017	PEP requirements.	2 Accountants; 2 Lawyers and Notaries	No violations were detected.
2018	Use of cash as regard to the movement subject to registration in	5 Banks	No violations were detected.

	the Anti-Money Laundering Archive (AIA), relating to the year 2017.		
2018	Correct fulfilment of CDD obligations.	2 Accountants 2 Lawyers and Notaries	The AML/CFT Supervision Unit detected in relation to Lawyers and one of the accountants violations referred to CDD procedures, risk profiling, record keeping requirements and lack of internal controls. As a consequence, the FIA imposed administrative sanctions.
2019	Correct fulfilment of AML/CFT obligations in relation to the special provisions for cash transactions.	7 Banks 2 FFC	No violations were detected.
2019	Beneficial ownership requirements.	6 Lawyers and Notaries	No violations were detected.
2019	Compliance with the AML/CFT obligations.	2 Trustees	No violations were detected.
2019	CDD requirements in relation to a previous cycle of off-site supervisory activities carried out in 2019 by the FIA from the analysis of the results of RBS questionnaires.	5 Banks	No violations were detected.
2019	On-going monitoring obligations in relation to a previous cycle of off-site supervisory activities carried out in 2019 by the FIA based on the analysis of the results of RBS questionnaires.	5 Banks	No violations were detected.

496. The targeted on-site inspections are initiated by triggering events such as information received by the FIA from STRs, CBSM supervisory activities, information from the LEAs and international FIU cooperation. Targeted on-site inspections are used by the FIA to react to specific information on potential non-compliance or violations of the AML/CFT Law by OEs. During these inspections the FIA checks client data and gathers more information on a specific customer, business relationship or transaction due to a trigger event. As such, these inspections are conducted for a specific, narrow purpose and in general are not used to monitor compliance of OEs with their AML/CFT obligations. The majority of the targeted inspections have been initiated against entities from sectors representing higher ML risk (banks, Lawyers and Notaries, FCC, Accountants, DPMS).

497. The follow-up on-site inspections are aimed at verifying the effective adoption of the corrective measures required by the FIA in order to remove the vulnerabilities that emerged during previous on-site inspections. For example, in 2018, follow-up on-site inspections were carried out in relation to previous thematic on-site inspections with reference to customers (companies) with limited corporate transparency (foreign companies in which beneficial ownership information transparency is limited). As with general on-site inspections, the use of follow-up inspections has been to some extent limited with 9 in total conducted between 2014-2020. For on-site inspections,

which revealed deficiencies but not violations, off-site supervisory measures were used to follow-up. Taking into account that deficiencies that are not violations are minor instances of breaches of AML/CFT obligations, this approach seems appropriate.

498. The use of targeted and thematic instead of general (full-scope) on-site inspections in cases of higher risk does not seem fully in line with the risk-based supervisory approach. A limited (thematic or targeted) view of the AML/CFT system of an obligated entity with higher risks may not yield a fully comprehensive view of existing systemic risks and deficiencies and cannot substitute for general inspections altogether. As seen in Table 32, during 6 years of supervision, only 2 full-scope or general on-site inspections have been conducted of FIs altogether, whereas no full-scope or general inspections have been conducted in banks as the sector with the highest significance and risk. The FIA may therefore only have a limited knowledge of the level of compliance with the AML/CFT obligations of higher risk sectors and in particular of specific entities. The AT is of a view that generally, for the higher and highest risk sectors a more in-depth approach is expected. While it is reasonable to use thematic and targeted on-site inspections to obtain more frequent coverage and to focus on higher risk issues or on triggering events, no use of general on-site inspections for OEs with the highest risks and very limited number of onsite inspections for OE's with higher risk is not in line with what is expected from a AML/CFT supervision with RBA.

499. For professionals and non-financial parties identified in the NRA as having a higher vulnerability to ML (lawyers/notaries, accountants, DPMS) the number of on-site inspections is on the lower end compared to the size of the sectors. For example, the whole number of on-site inspections conducted for lawyers/notaries from 2014 to 31.08.2020 was 18; 6 of which were targeted and triggered by specific events. During 6 years of supervision 18 out of potentially 125 lawyers/notaries had been subject to on-site supervision by FIA. Similarly, out of the two groups of 117 Accountants and 39 DPMS each group has been inspected in total 16 times during the 6-year period, out of which 9 and 7 were targeted inspections.

500. The methodology for inspections, as described in the Supervisory Manual, sufficiently covers the necessary elements to be analysed and taken into consideration. From the materials presented to the AT, the on-site inspections conducted by the FIA seem to have the necessary depth and rigour and are in line with the requirements of the Supervisory Manual. Generally, thematic inspections (mainly used for higher risk areas) are focussed and do not extend beyond the pre-defined themes. Some examples of extending targeted on-site inspections are shown in box below. These positive examples of thorough inspections and willingness to react swiftly described in box below mainly pertain to on-site supervisory activities regarding lower risk entities and not to entities with higher risk and more complex structures. The expansion of the initial scope of the on-site inspection is also not done on a regular basis so it cannot be concluded that these inspections could substitute for a full scope on-site.

CASE STUDY 7: Targeted on-site inspections by FIA AML/CFT Supervision Unit

Based on AML/CFT vulnerabilities detected during 2015 NRA, the AML/CFT Supervision Unit carried out 11 targeted on-site inspections on a sub-sector of DNFPs, in order to verify the application of the CDD requirements. During the inspections, deficiencies were detected regarding one OE. In the light of this outcome, the AML/CFT Supervision Unit extended the scope of the on-site inspection and requested additional information. The AML/CFT Supervision Unit scrutinised the financial transactions, referred to the OE's current accounts and all the CDD documentation relating to its customers (from 2010 to 2015) as well as all relevant documentation of a selected sample of customers. The results revealed violations of CDD and record-keeping requirements. Most customers were managed by the OE through another closely connected OE. The FIA therefore extended the on-site inspection to the other OE. The AML/CFT violations related to possible criminal activity. Both OEs were reported to the JA. The person

connected to both OEs was convicted, sentenced to imprisonment, and sanctioned by the FIA for activities in both OEs.

CASE STUDY 8: Targeted on-site inspection by FIA AML/CFT Supervision Unit upon request of FIA's Financial Analysis Unit

After a STR the FIA's Financial Analysis Unit requested the cooperation of the FIA's AML/CFT Supervision Unit in order to collect useful data and information in relation to specific transactions by a customer. The AML/CFT Supervision Unit carried out a targeted on-site inspection with regard to a subsector of DNFBP (established in the form of a company), whose customer was referred to in the STR. AML/CFT anomalies were found and the scope of the on-site inspection extended. The inspection revealed that the obligated entity failed to comply with some AML/CFT obligations and requirements. The FIA imposed sanctions for violations concerning: CDD requirements, on-going monitoring, risk profiling, PEPs identification and record-keeping requirements. The FIA also sanctioned the lack of employees' AML/CFT training and the lack of AML/CFT controls by the AML/CFT Officer. The obligated entity was sanctioned several times for several violations and the AML/CFT Officer removed.

Following the on-site inspection, thorough off-site supervision activities, the FIA has verified the implementation of the remedial actions for the deficiencies identified, including the restructuring of the internal AML/CFT processes and the replacement of the AML/CFT Officer. Later, the AML/CFT Supervision Unit carried out a full scope on-site follow-up inspection in order to verify the obligated entity's AML/CFT compliance with the AML/CFT requirements. The follow-up on-site inspection detected less extensive and less severe deficiencies than the previous on-site inspection; nonetheless, the FIA imposed sanctions.

501. The current structure of the FIA consists of two main units, the Financial Analysis Unit (3 analysts and Deputy Director) and the AML/CFT Supervision Unit (4 inspectors) supported by the Regulation & Legal Services Unit (2 legal-regulation), the Organization & Administration Unit (2 administrative and 1 IT) and by the Director.

502. Due to its size and risk-based supervision, the FIA implements a cross-fertilization approach in the FIA's Staff management. Based on need and the supervisory task at hand, the FIA has engaged other inspectors or staff to support the supervisors of the AML/CFT controls in some on-site inspections. For example, a cycle of on-site inspections was conducted on Insurance and Reinsurance Intermediaries with the support of an analyst (31 on-site inspections). In another case, a legal staff person was used to support a series of thematic inspections on Lawyers and Notaries (6 on-site inspections). San Marino has also used a member of the Gendarmerie seconded to the FIA to provide effective support for the on-site inspections.

503. Taking into account the number of OEs (in particular small number of FIs), the FIA considers the supervision workload to be manageable with the current level of human resources. OEs in San Marino also include sectors that do not fall under the definition of DNFBPs in the FATF Glossary such as auction houses, art galleries and dealers in antiquities. The FIA supervises 430 entities for AML/CFT requirements with 4 inspectors. Even if the 4 FIA inspectors did not deal with the non-supervisory functions and even with the opportunity to use secondment of non-AML/CFT specialists, the human resources of the FIA seem insufficient. The implementation of a cross-fertilization provides relief and is a good approach on principle, but regardless the human resources seem insufficient. This is evident from the supervisory activities, where among other reasons, based on resources, no full-scope inspections have been conducted in sectors with highest risk and very limited to sectors with higher risk.

504. For supervisory purposes the FIA staff use a tailor-made case management system (FIA IT System – "DB AIF") described in IO 6 with access to the various subsystems of the tool, such as: i) AML/CFT supervising activities and sanctions; ii) FIs surveys data entry and storing of related data;

iii) AML/CFT Officers database; iv) OEs (FIs and DNFBPs) database; v) Statistics; vi) correspondent register management; vii) STRs data entry. The RBS Tool is also part of the subsystem, since RBS questionnaires are transmitted to OEs through the FIA's STR-WEB portal. The case management system DB AIF seems sufficient for supervisory purposes.

VASP sector

505. Currently no VASPs have been registered in San Marino and therefore no on-site or off-site activities have been taken in this sector of OEs. Nevertheless, the VASP sector is subject to AML/CFT requirements under AML/CFT Law as OEs belonging to the category of non-financial entities. As such any new potential VASP would be subject to the same risk-based supervision model and tools as other OEs.

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

506. The administrative and criminal sanctioning regime for violation of AML/CFT requirements is provided for in the AML/CFT Law. For breaches of AML/CFT obligations, the FIA has the power to impose administrative sanctions to issue fines for administrative violations. Some TC deficiencies restrict effective application of remedial actions in San Marino (see R.35).

507. Administrative sanctions may be issued to anyone who is liable for his own actions or omissions, whether wilful or negligent. Intent does not need to be established in order to issue administrative sanctions. Identification of a breach is sufficient and when specific persons may not be identified, the sanction will be paid by the entity. As the least serious administrative sanction for violations that are characterised as rare offensiveness and as an alternative to pecuniary administrative sanctions, the FIA has the powers to issue: *i)* an order to eliminate the violations and to refrain from repeating them (Art. 67 ter para 1 lett. a of the AML/CFT Law); *ii)* a public statement concerning the violation committed and the person responsible Art. 67 ter para 1 lett. b of the AML/CFT Law).

508. Any improvement requests in relation to the critical issues detected (which are not violations and therefore do not require sanctions) are addressed to OEs for the adoption of the consequent corrective or mitigating measures. Although sanctions are not imposed, the improvement requests are binding, and they initiate further supervisory measures if not adhered to. Based on these subsequent inspections the application of sanctioning measures such as fines are decided upon. Table 34 below shows the type and number of improvement requests imposed on OEs in relation to critical issues detected by the supervisory activity. In practice the FIA prioritizes issuing improvement requests rather than sanctions in order to maintain constructive dialogue with the OE. This is the case since violations of AML/CFT obligations are followed by sanctions and in San Marino sanctions are applied to individuals/employees rather than to the legal entity.

Table 34 Number and topic of improvement requests made

		FIs	Professionals	DNFBPs	Total
2014 - 2020*					
No. of on-site Inspections		154	34	38	226
No./Total Amount of fines		No. 28/ €232 089	No. 8/ €107 400	No. 11*/ €192 098	No. 47 / €531 587
No. of Improvement requests ("Osservazioni") reported in the Inspection Reports	Improvement requests on CDD	31	11	27	69
	Improvement requests on SCDD measures	-	2	-	2
	Improvement requests on ongoing monitoring	14	1	4	19

	Improvement requests on identifying and verifying B.O.	3	2	3	8
	Improvement requests on identifying and verifying PEP	-	5	1	6
	Improvement requests on customers' risk profiling	2	9	5	16
	Improvement requests on record keeping and registration requirements	15	7	5	27
	Improvement requests on reporting requirements (STRs) to the FIA	-	-	3	3
	Improvement requests on AML/CFT procedures	52	-	2	54
	Improvement requests on AML/CFT internal controls	25	4	12	41
	Improvement requests on training requirements	3	1	4	8
	Improvement requests on training requirements for employees and collaborators	21	-	-	21
	Improvement requests on analytical indication of payments	n/a	1	n/a	1
	Improvement requests on modalities to carry out activities	-	1	5	6
	Improvement requests on the appointment of AML/CFT Officer	1	-	-	1
	Improvement requests on IT procedures on AML/CFT matters	5	-	1	6
Total		172	44	72	288
(*) Sanctions in evaluation in relation to inspections carried out in 2019 (last part of the year) on DNFBPs. *As at 31.08.2020					

509. Pecuniary sanctions are fixed in a range to include minimum and maximum amounts, which range from €1 000 to €5 000 as a minimum and €25 000 to €100 000 as a maximum amount depending on the specific violation. When a serious, repeated, systemic violation or multiple violations provide an economic advantage, the maximum amounts of fines are raised to up to twice the amount of the advantage or up to €1 million if the advantage cannot be determined. The higher amounts mentioned are only available to authorities in the event of an economic advantage has occurred from the breach. The violations also have to be serious, repeated, systemic or multiple. Pecuniary sanctions do not distinguish between the type of obligated entity responsible for the breaches, i.e. banks and REAs would have the same range of pecuniary sanctions available, for example.

510. In cases of serious, repeated, systematic or multiple violations, the FIA can revoke authorizations of an obliged entity only on a temporary basis – for a period of not less than six months and not more than three years. The FIA can only restrict the activity of persons in managerial positions in an obliged entity or any other person responsible for the breach temporarily. The CBSM as prudential supervisor has the power to revoke authorisation in the case of authorised party constituting serious threat to the stability of or the trust in the system by continuing its business (Art 10(d-bis) of the LISF). Whether such power can be used in cases of serious, repeated, systematic or multiple violations of AML/CFT Law is unclear, since the interpretation of this legislation in such a manner in practice has not been demonstrated to the AT.

Table 35 AML/CFT Supervisory ON-SITE Inspections - Sanctions imposed

AML/CFT Supervisory ON-SITE Inspections - Sanctions imposed (€)																
OES	2014		2015		2016		2017		2018		2019		2020*		Total	
	Fines		Fines		Fines		Fines		Fines		Fines		Fines			
	No	Total Amount	No	Total Amount	No	Total Amount	No	Total Amount	No	Total Amount	No	Total Amount	No	Total Amount	No	Total Amount
FIS																
Banks	-	-	11	44 400	2	16 000	-	-	1	10 000	1	3 000	-	-	15	73 400
Financial and Fiduciary Companies – FFC	5	51 089	6	82 600	1	8 000	-	-	-	-	-	-	-	-	12	141 68
Insurance and Reinsurance Intermediaries	-	-	1	17 000	-	-	-	-	-	-	-	-	-	-	1	17 000
PROFESSIONALS																
Lawyers and Notaries	1	5 100	-	-	-	-	-	-	2	37 300	-	-	1	9 000	4	51 400
Accountants and Auditors	-	-	-	-	3	33 500	-	-	1	22 500	-	-	-	-	4	56 000
OTHER NFPs																
REAs	-	-	-	-	-	-	-	-	-	-	-	<i>in evaluation</i>	-	-	0	0
DPMS	-	-	-	-	1	18 000	4	63 098	-	-	1	26 800	-	-	6	107 898
Consultancy Entities on administrative, tax, financial and commercial matters	-	-	-	-	5	84 200	-	-	N/A	N/A	N/A	N/A	N/A	N/A	5	84 200
Total	6	56 189	18	144 000	12	159 700	4	63 098	4	69 800	2	29 800	1	9 000	47	531 587

* As at 31.08.2020

511. From 2014 – 2020 and based on supervisory activity, a total number of 47 sanctions were imposed, for an overall amount of €531 587. From 2014 – 2020 the FIA in its supervisory function has reported 9 criminal sanctions to the JA and removed 1 AML/CFT Officer in a DPMS.

512. The amounts of fines available to the FIA are rather low and are the same range applies all sectors. The same level of sanctions is available for banks as it is for accountants and leads to a disparity in terms of dissuasiveness of specific measures. In relation to sanctioning individual employees for AML/CFT violations, the maximum fine applied for one violation does not exceed €10 000. This could be dissuasive to lower-level staff but not in the case of management of the FI. The AT considers that the overall amount of fines issued for FIs and in particular banks seems to be disproportionately low given the materiality of the sector and their ML risk (see Table 35). As improvement requests are not considered as violations they are not sanctions. The AT does not consider the general level of sanctions applied by San Marino in practice for the sectors with biggest materiality and highest ML/TF risk exposure to be dissuasive and effective. For instance, a total amount of €73 400 in fines was applied to the banking sector during the 7 year-period for 15 violations. Given that the market share of the banking sector is 88% and the ML/TF risk exposure, the level of fines is not considered sufficiently dissuasive.

513. The amount and range of fines can also be benchmarked against the minimum requirements set out in AMLD IV.⁴⁷ Comparison to the minimum requirements for the maximum amount of administrative pecuniary sanctions confirms the need for greater range in the amounts of fines for different OEs. The minimum requirements for the maximum amount of administrative pecuniary

⁴⁷ San Marino has signed a Monetary Agreement with the EU and has proclaimed to transpose Directive (EU) 2015/849 of the European Parliament and of the Council of European Union (AMLD IV) into national legislation with AML/CFT Law.

sanctions in AMLD IV are also not limited to situations when economic advantage has been determined, as is stipulated in Art. 67 bis (1).

6.2.5. Impact of supervisory actions on compliance

514. The activity of the FIA in conducting AML/CFT supervision has been geared towards encouraging OEs to improve their AML/CFT controls. During the interviews the FIA stressed that the emphasis of the supervisory approach is to enhance collaboration and promote open dialogue. For this purpose, the FIA uses the exit meetings at on-site inspections (where critical issues detected are shared and discussed) to ensure prompt use of mitigation measures. Necessarily, additional follow-up activities, including *ad hoc* on-site inspections, are used to ensure all corrective actions required by the FIA have been taken.

515. Measures taken to promote clear understanding of AML/CFT obligations, include sharing and explaining the results of the NRA to each category of private sectors, issuing specific regulatory provisions (Instructions, Circulars, Guidelines) tailor made for each category of OEs aimed at adopting effective AML/CFT measures. The FIA also publishes periodic newsletters about international publications, national legislation, trends and typologies with the aim of increasing AML/CFT knowledge of ML/TF risks to OEs (tailor-made publications regarding TF, PF and the possible misuse of NPOs). In general, the FIA's activities have a positive effect on the understanding and compliance with AML/CFT obligations by the private sector.

516. Based on the on-site and off-site inspections, a review of the internal procedures and input of the OEs to the RBS Tool via self-assessment questionnaires, the FIA has seen an increase in effectiveness of the systems and controls, as well as in the awareness of OEs. Given the increase in the number of on-site inspections since 2014, the number of sanctions and the overall amounts of fines imposed have, over the same period, decreased. The effectiveness and impact of supervisory actions on compliance is reflected in the understanding of the AML/CFT obligations and the ML/TF risks by OEs and in the adoption of external tools for CDD and detection of TFS by whole categories of DNFBPs. OEs subject to improvement requests have also applied all necessary improvements.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

517. To promote understanding of AML/CFT obligations and ML/TF risks the FIA issues specific regulatory provisions, which are tailor made for each category of OEs so that they adopt effective AML/CFT measures. From 2014 to 31.12.2019, the FIA has issued: i) 27 instructions on the prevention and combating of money laundering and terrorist financing concerning financial parties and professionals; ii) 9 circulars for financial parties, lawyers, notaries and accountants, as well as for non-financial parties and iii) 3 guidelines to financial parties - "Self-assessment of the risks of money laundering and terrorist financing", guidelines for lawyers and notaries, accountants and insurance intermediaries and financial promoters on "Acquisition of data and information on customers, proxy holders and BOs", as well as "Guidelines for OEs on Voluntary Disclosure" aimed at facilitating and understanding AML/CFT risks and requirements for the various OEs.

518. These documents are published on the website of the FIA and in the Official Bulletin of San Marino. The FIA also publishes periodic newsletters about international publications, national legislation, trends and typologies, issues an annual report covering the activity carried out by the FIA for the prevention and combating of ML and TF and issues *ad hoc* publications on ML/TF risks.

519. The FIA, on a continuous basis, provides the OEs as well as domestic partners with targeted training and guidance on new practices and areas of higher ML/TF risks. From 2014 to 31.12.2019, 25 different training courses were provided to the OEs. The topics of training courses have covered financing of terrorism, self-assessment of risks and the application of AML legislation to lawyers and notaries.

520. As a result of these promotional activities it is advanced on behalf of the FIA that the banking sector and most FIs have a clearer general understanding of their sector specific risks and a good level of understanding of their AML/ CFT obligations. DNFBPs (aside from the accountants and auditors) on the other hand demonstrated a lower level of understanding of their risks and ways of being misused, as well as their obligations. Therefore, some sectors would benefit from further guidance and training on their AML/CFT obligations as further articulated under IO.4.

Overall conclusions on IO.3

521. San Marino has achieved IO.3 to some extent and major improvements are needed to improve the supervisory regime.

522. The requirements for licencing, registration and controls preventing criminals and their associates from entering the market are in general appropriate for FIs. However, the absence of a clear definition of association with criminals as a stand-alone basis for declining market-entry and the lack of coherent and coordinated (internal) procedures for bodies responsible for the market entry of DNFBPs raises concerns. This issue is more relevant for the DNFBP sector as obligations relating to market-entry controls are fragmented between the different authorities (lawyers/notaries, OEA and self-regulatory bodies), while the awareness of risks is not as well-formed as in the CBSM.

523. In general, the San Marino supervisory authorities demonstrated a good understanding of ML/TF risks, except for the ML/TF risks of financial groups (both foreign and domestic). The San Marino authorities use the results of the 2015 and 2019 NRAs, the information made available through the activities of the FIA (as a FIU) and the results of the self-assessment of ML/TF risks conducted by OEs within the RBS Tool process to set up their supervisory strategy and to plan their supervisory activities. In practice neither the CBSM nor FIA conduct consolidated group supervision for foreign or domestic entities that are part of the same financial group. In the context of San Marino this deficiency has limited materiality.

524. While the understanding of ML/TF risks by supervisory authorities is good and the FIA's determination to be rigorous in their supervisory activity is evident and is shown in practice to some extent, the resources allocated to the FIA for supervisory purposes do not seem to be sufficient given the amount of tasks the FIA is required to perform and this limits the rigorous supervision is necessary to direct towards the highest risk sectors. The fact that there are no general on-site inspections for the OEs with the highest risk (banks) and very limited number of onsite inspections for OE's with higher risk, is not in line with the risks and supervisory expectations. The number of supervisory activities for FIs and (in particular) DNFBPs also seem to be somewhat limited. The sanctions regime is considered dissuasive to a limited extent as the amounts of the pecuniary penalties are rather low and do not offer a range of penalties to different sectors.

525. To promote a clear understanding of AML/CFT obligations and ML/TF risks, the FIA provides the OEs with good quality and appropriate targeted training and guidance on new practices.

526. San Marino is rated as having a moderate level of effectiveness for IO.3.

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

- 1) Information on the creation and types of legal persons and legal arrangements that may be established under Sammarinese law is publicly available and provides information on the types and features of the legal persons and arrangements. Processes for the creation of those legal persons, as well as for obtaining and recording basic ownership information are described in the legislation, as well as on the public websites, which are accessible online without restriction. The rules governing the various features of Sammarinese trusts (e.g. professional, non-professional trusts) are scattered across four different legal instruments.
- 2) The NRAs carried out by Sammarinese authorities in 2015 and 2019 do not include a comprehensive and systematic identification and assessment of ML/TF risks associated with all types of legal persons created in the country. Nevertheless, the authorities demonstrated adequate understanding of the risks.
- 3) OEs are required to identify and verify the identity of BOs for customers that are legal persons or legal arrangements. Whereby the FIA has issued instructions for the OEs on proper identification of beneficial ownership information, the AT has doubts in relation to DNFBPs and smaller FIs' ability to properly identify and verify beneficial ownership information, *inter alia* in case of complex structures considering the examples provided during interviews (see IO.4).
- 4) Since 2010 bearer shares and bearer share warrants are not allowed anymore in San Marino. Previously existing bearer shares had to be converted into registered shares by 30 September 2010. As a result, anonymous companies were transformed into SPAs.
- 5) The legislation does not explicitly regulate nominee directors and shareholders, however, there are no prohibitions either. Fiduciary companies can hold titles to shares of companies in San Marino. In addition, San Marino's legal framework in relation to trusts is fragmented.
- 6) Competent authorities can access basic and beneficial ownership information through various registers, through information held by the legal persons or legal arrangement concerned and through information held by OEs.
- 7) Basic information is available to all authorities through direct, access to the Register of Companies and the Trust Register. The former is a public register and may be accessed online, whereas the latter is not a public register and is maintained as a hardcopy register.
- 8) Beneficial ownership information is available to all authorities through direct, online access to the Register of Beneficial Owners of Companies and the Register of Beneficial Owners of Trusts (REGTET), which are both electronic databases. Both registers are not publicly accessible. In addition, beneficial ownership information is available for the FIA through STR information and requests to OEs. LEAs can request beneficial ownership information also directly from companies or trusts. The Register of Fiduciary Shareholdings contains some beneficial ownership information and is not publicly accessible.

- 9) The authorities have timely access to basic and beneficial ownership information of legal persons and legal arrangements. The information is adequate, as it contains sufficient and valuable data of the beneficial ownership, but concerns remain about whether the information is up-to-date and accurate. These concerns arise ultimately from the lack of relevant measures in place available to the OCA and the CBSM for keeping the beneficial ownership information of legal persons and legal arrangements in the respective Beneficial Owner Registers. In addition, the OCA lacks sufficient human resources, which exacerbate these concerns.
- 10) The administrative sanctions for violations of the information requirements imposed are not proportionate, dissuasive and effective. The sanctions regime also envisages harsh criminal sanctions for the omission or the intentional submission of false information to the Register of Beneficial Owners, which however, in practice have not yet been applied.

Recommended Actions

- 1) The authorities should carry out a comprehensive and systematic analysis of both ML and TF risks associated with all types of legal entities. The analysis should, inter alia, take into account the risk of “straw-men” for the incorporation of and execution of financial transactions through corporate vehicles.
- 2) The OCA should increase its human resources for the administration of the Register of Beneficial Owners of Companies and implement verification measures to ensure that beneficial ownership information held is accurate and up-to-date.
- 3) The CBSM should consider streamlining the registration processes of basic and beneficial ownership information of trusts by converting the Trust Register from a hard copy form to an electronic form to ensure better access to the basic information of trusts and that beneficial ownership information held is accurate and up-to-date.
- 4) San Marino should take further measures to ensure that beneficial information held in registers is accurate and up-to-date, such as for example adopting legal requirements to report discrepancies to the Register of Beneficial Owners of Companies and to the REGTET, the obligation to regularly update the beneficial ownership information independently of a change (e.g. once a year) or regularly confirm that no changes in beneficial ownership information have occurred (e.g. once a year).
- 5) San Marino should consider vesting analytical capacities with the OCA or another competent authority to conduct specific risk analyses on the data held by the Register of Beneficial Owners of Companies.
- 6) San Marino should harmonize its trust legislation with a view to the definition of PT and the record keeping obligations for NPTs.
- 7) San Marino should increase the effectiveness and dissuasiveness of administrative sanctions for violations of the basic and beneficial ownership information obligation.

527. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.⁴⁸

⁴⁸ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum’s respective methodologies, objectives and scope of the standards.

7.2. Immediate Outcome 5 (Legal Persons and Arrangements)

Contextual information

528. According to the Register of Companies held by the OEA, at 30 June 2020, the number of the registered companies amounted to 5 581 companies of which 2 695 are companies that carry out business activities and 2 886 are companies under procedures (e.g. voluntary liquidation, compulsory liquidation) and have no active licences.

529. The most common legal person incorporated in San Marino is the SRL. In 30 June 2020 5 139 SRL were registered, followed by 437 SPA, 66 cooperatives, 5 partnerships (*Società in nome collettivo* – SNC) and 4 consortia (see Table 36).

530. Following tables provide more details on number of companies broken down by the 3 most common types of companies and number of newly registered companies per year and type of companies (SPA, SRL and SNC).

Table 36: Number of companies broken down by the 3 most common types of legal entities

	2015	2016	2017	2018	2019	2020*
SPA	477	460	449	445	437	437
SRL	4.897	4.951	5.017	5.158	5.125	5.139
SNC	0	0	1	4	5	5
Cooperatives	69	67	67	66	65	66
Consortia	4	4	4	4	4	4
*As at 30.06.2020						

Table 37: Number of newly registered companies per year and type of legal entities

	2015	2016	2017	2018	2019	2020*
SPA	7	7	5	9	7	3
SRL	282	213	209	213	207	79
SNC	0	0	1	3	1	0
Cooperatives	1	2	0	0	0	1
Consortia	0	0	0	0	0	0
*As at 30.06.2020						

531. Almost 76% of legal persons are directly owned by citizens of San Marino or Italy. In general, the most common type of ownership is direct ownership (79%), while the other forms represent a residual value: Indirect ownership (8%), Discharging of administrative responsibilities (6%), Control by other means (5%) and indirect ownership through other means (1%).

532. San Marino is a trust law country; the Law on Trusts provides for the establishment of professional and NPTs. The number of trusts registered by 30 June 2020 amounts to is 164, of which 1 trust is a foreign trust (see Table 38). All trust were irrevocable trusts (see Table 41) and the vast majority thereof (154) were beneficiary trusts, whereas 5 were set up as purpose trusts and 5 as mix of both types (see Table 39). The majority of settlors are non-resident in San Marino, so were

the trustees (see Tables 41 and 42). As for the resident trustees FIs acting as PT account for the 23% of the total resident trustees managing 32% of all trusts, which hold 70% of the value of the assets. The majority of the non-resident trustees in turn made use of a local agent, predominantly a lawyer or notary public accredited in San Marino.

Table 38: Number of trusts registered in the Trust Register

Year	Domestic Trusts	Foreign Trusts	Total
2015	109	0	109
2016	120	0	120
2017	120	0	120
2018	130	1	131
2019	153	1	154
2020*	163	1	164
*As at 30.06.2020			

Table 39: Type of trust

Year	Beneficiary Trusts	Purpose Trusts	Beneficiary and Purpose Trusts	Total
2015	104	4	1	109
2016	114	4	2	120
2017	115	4	1	120
2018	124	5	2	131
2019	147	5	2	154
2020*	154	5	5	164
*As at 30.06.2020				

Table 40: Beneficiary trust

Year	With current interests	Without current interests	Total
2015	26	79	105
2016	33	83	116
2017	32	84	116
2018	36	90	126
2019*	37	97	134
*As at 30.06.2019			

Table 41: Type of trust

Year	Irrevocable	Revocable	Total
2015	109	0	109
2016	119	1	120
2017	120	0	120
2018	131	0	131
2019	154	0	154
2020*	164	0	164
*As at 30.06.2020			

Table 42: Settlor Residence

Year	Resident	Not resident	Total
2015	21	88	109
2016	24	96	120
2017	21	99	120
2018	19	112	131
2019	22	132	154
2020*	23	131	164
*As at 30.06.2020			

Table 43: Trustee Residence

Year	Resident	Not resident	Total
2015	32	77	109
2016	33	87	120
2017	29	91	120
2018	30	101	131
2019	37	117	154
2020*	39	125	164
*As at 30.06.2020			

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

533. Information on the creation and types of legal persons and legal arrangements that may be established under Sammarinese law is publicly available. The relevant legislation provides information on the types and features of the legal persons and arrangements and is publicly available on the websites of the Parliament of San Marino, the Economic Development Agency - Chamber of

Commerce and the San Marino Portal of Public Administration and as regards trust only also in the “Archive of the laws” section, as well as on the website of the CBSM and on the website of the parliament.

534. Information on the processes for the creation of legal persons can also be found online on the website of the Parliament of San Marino, the Economic Development Agency - Chamber of Commerce (<https://www.agency.sm/en/invest-in-san-marino/corporate-law>). Some information on the processes for the creation of legal arrangements can be found on the public website of the CBSM (<https://www.bcsm.sm/site/en/home/functions/other-functions/trust.html>).

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

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

536. The 2015 NRA refers to the abuse of legal persons only in two instances. The 2019 NRA deals with ML threats related to legal persons, but it does not touch upon relevant ML vulnerabilities. The main threat identified in the 2019 NRA in relation to legal persons is swindling/fraud. The 2015 NRA identified the main ML threats in relation to domestic legal persons deriving from the proceeds of crimes committed in San Marino mainly from corruption, misappropriation and fraud/swindling. This only reflect the main ML threats identified in the NRA but does not assess specific threats or vulnerabilities in relation to all types of legal persons.

537. The 2019 NRA provides quantitative data on the number of companies, the type of beneficial ownership (direct or indirect), the number and type of legal entities and sectors involved in ML cases, the nationality of shareholders. The main type of legal person misused – both foreign and domestic – is the SRL due to its wide-spread use (both domestically and abroad) and its structural characteristics. During the on-site visit, the San Marino authorities elaborated that the high risk is associated with the low amount of capital to be raised for incorporating an SRL and its corporate structure. However, the information provided in the 2019 NRA falls short of a fully-fledged ML/TF risk analysis of legal persons, which should present the threats and vulnerabilities of each type of legal person in a systematic manner based on quantitative and qualitative data eventually leading to a conclusion of the final risk (i.e. the residual risk after having applied existing risk mitigating measures) and, if necessary, subsequently proposing additional risk mitigating measures to be applied in the future in order to decrease the risk to an acceptable level. There are also no risk categories assigned to all types of legal persons. The 2019 NRA also does not analyse TF threats and vulnerabilities associated with each type of legal person. It also does not establish ML and TF risk categories.

538. According to the 2019 NRA there are no specific ML typologies related to different types of legal persons. There are also only a few STRs related to legal persons, even though there are ML cases, which involve San Marino legal entities. San Marino’s legal framework does not explicitly regulate nominee directors, but there are no prohibitions either. Nevertheless, the authorities consider the use of Sammarinese or Italian citizens as strawmen as a high ML risk. Sammarinese legal persons are regularly involved in ML investigations, prosecutions and convictions. Even though not formally addressed in the NRA, authorities stated that the misuse of Sammarinese legal persons within a web or chain of complex transnational structures represents a high ML risk. Hence, the authorities consider the ML risk associated with legal persons as high. The authorities detected that SRLs face the highest risk of being abused for ML. 71% of the legal entities reported by the FIA to the JA were SRLs. In the past SRLs were misused either for the purchase of shares with illicit money or for the issuance of false invoices. As a general measure to mitigate the ML risk associated with legal persons San Marino proposes to further support the Anti-fraud squad of the Civil Police.

539. Although not required by Recommendation (R.) 25 the 2019 NRA assessed the threats related to trusts. This assessment did not reveal any ML/TF threat related to Sammarinese trusts as there are no ML investigations or convictions related to trusts. The authorities consider the ML risk associated with trusts generally lower than the risk of legal persons due to the lower number of trusts and the notion that all trustees are in some way bound to the AML/CFT framework (obligations and supervision) even though to varying degrees. As a general risk mitigating measure the 2019 NRA proposes the harmonisation of the trust legislation with a view to the definition of PT and the record keeping obligations for NPTs.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

540. San Marino has taken several measures to prevent the misuse of legal persons and legal arrangements.

Registers

541. In order to enhance the transparency of legal persons and arrangements San Marino established a number of registers holding basic and beneficial ownership information.

542. The Register of Companies is a public register and holds basic information of companies and unlimited partnerships. It is administered by the Office for Economic Activities (OEA) and it can be accessed by authorities through direct, online, real time access. There are no limitations for authorities as regards the search criteria. Aggregated searches on all entries regarding a natural person are possible as well as historic searches. Access to the public is provided through computer terminals at the OEA or by paper request. Basic information of cooperatives is held by the Register of Cooperatives, basic information on foundations by the Register of Foundations and basic information on associations by the Register of Associations. All of these registers are publicly accessible. Basic information of consortia can be obtained from the Register of Consortia. The Registers of Cooperatives, Consortia, Associations and Foundations are held in the form of an electronic database at the "*Cancelleria Commerciale*."

543. Basic information on trusts is filed with the Office of the Trust Register at the CBSM and held by the Trust Register, which is also administered by the CBSM. The basic information is filed in written form and the Trust Register is held in hard copy format. There is no electronic database. The legal deadline for transcribing the information received into the Trust Register is five days, in practice it takes the CBSM 2 to 3 days.

544. San Marino also established two types of beneficial ownership registers:

The Register of Beneficial Owners of Companies, which is administered by the Office Control Activities (OCA), holds beneficial ownership information of companies, associations, foundations and similar entities with legal personalities. Only companies in liquidation are exempted from reporting their BOs. Until 30 June 2020 out of 5,283 legal entities 4,383 reported their BOs to the OCA, which yields a reporting rate of 82.96%. Until the same date out of 7.319 of all communications related to BOs 5,599 (76.50%) were filed by accountants, lawyers and notaries for their clients. Out of the 900 legal entities, which have not communicated their BOs until 30 June 2020, 82,56% are companies (ie. 743) of which 78,47% (ie. 583) are companies under voluntary liquidation and 97 are companies with a terminated license. Only 3 companies that have an active license (thus which are operative), have not communicated their BOs and thus have been sanctioned at the time of the on-site visit. All of these companies are SRLs. Out of the remaining 157 legal entities, which have not communicated their BOs until 30 June 2020, 100 (11.11%) are associations, 34 (3.78%) are ecclesiastical legal entities, 16 (1.78%) are cooperatives and 7 (0.78%) are foundations. The OCA is established at the Department of Economy at the Ministry of Industry. The OCA cannot dispose of an own dedicated IT-budget and sufficient number of staff for adopting measures to ensure that beneficial owner information reported to the register is accurate and up-to-date at all times. At the

time of the on-site visit three full time equivalents were administering all aspects of the register including IT aspects.

The Register of Beneficial Owners of Trusts (REGTET) is administered by the Office of the Trust Register at the CBSM and is kept in the form of an electronic database. The information on beneficial ownership of a trust is filed by the resident trustee or resident agent for non-resident trustees with the Office of the Trust Register in written form. Subsequently, the CBSM staff enters the information into the register through the REG-TET application. In practice it takes 2 to 5 days to transcribe the information received in writing into the database. The CBSM dedicates 3 FTEs to the administration of the REGTET (who are at the same time administering the Trust Register). As of 30 June 2020, out of all of San Marino's 164 trusts 163 had registered their BOs with the REGTET. 1 trust was sanctioned for not registering its BOs.

545. In addition, in 2010 the Register of Fiduciary Shareholdings was established at the CBSM. The Register of Fiduciary Shareholdings is a unique instrument implemented by the San Marino authorities to reduce the misuse of domestic legal persons by permitting all competent authorities to have access to the names of actual shareholders (and their BOs) protected by fiduciary mandates held by foreign and domestic FIs. The JA, LEAs (when acting as judicial police), the FIA, the OCA and the CLO have access to this register in order to perform the functions assigned by law. It contains the information on the shareholdings in Sammarinese companies held by fiduciary companies from San Marino or abroad. In that regard fiduciary companies shall report the personal details of the mandators, the size of the investment attributable to each one and, where these are not natural persons, the personal details of their BOs, the latter as defined by AML/CFT Law. A communication must also be sent to report any subsequent change in the shareholding structure of their mandators and/or of their BOs. Fiduciary companies are able to control votes (Art. 2 of the LISF). The Registry of Fiduciary Investments does not contain information on the control of votes by fiduciary companies. The information on syndicated voting rights is available to the notaries who drawn up the deed of shareholder meetings and such information is accessible to the competent authorities.

Customer Due Diligence

546. OEs are required to identify and verify the identity of BOs for customers that are legal persons or legal arrangements. Whereby the FIA has issued instructions for the OEs on proper identification of BO information, the AT has doubts in relation to smaller FIs' ability to properly identify and verify BO information, *inter alia* in case of complex structures considering the examples provided during interviews (see IO.4).

Bearer shares

547. Companies were prohibited from issuing bearer shares in 2010. These so called 'anonymous companies' (bearer share owned companies) were required to register their shares by 30 September 2010 and deposit the original excerpt of the stock ledger by 30 November 2010 with the Single Law Court. With the deposit of such documents, the bearer share owned companies become stock companies. At the date of the on-site visit no more bearer share owned companies exist. The authorities are of the view that there are also no Sammarinese bearer share companies listed at international stock exchanges.

Nominee shares and nominee directors

548. San Marino's legal framework does not explicitly regulate nominee directors and shareholders, but there are no prohibitions either. The authorities did not provide information on mechanisms to prevent the abuse of nominee directors. Nevertheless, the authorities consider the use of Sammarinese or Italian citizens as strawmen as a high ML risk.

549. Fiduciary companies can hold title to shares of companies in San Marino. These are regulated entities, which are supervised by the CBSM. Moreover, fiduciary company are subject to

the AML/CFT Law (i.e. OEs supervised by the FIA) and the business relationship (“mandato fiduciario”) between the fiduciary companies and their customers (i.e. mandators or “fiducianti”) is subject to CDD (including identifying and verifying the identity of BOs). Finally, as for other legal entities, the legal entities held by fiduciary companies have to communicate the BOs to the Register of Beneficial Owners of Companies and the fiduciary companies have also obligation to communicate the identification data of mandators and of the BOs to the Register of Fiduciary Shareholdings. The 2019 NRA concluded that the exposure to ML risk of FFC’s sector is medium, whereas in 2015 it was rated medium-high. There is no assessment of the FFC’s sector exposure to TF risk.

Legal arrangements

550. As regards legal arrangements, PTs of San Marino trusts are subject to the AML/CFT law. Other types of trustees are also bound to the AML/CFT framework (obligations and supervision) even though to varying degrees. PTs are subject to the CBSM regulation and require prior authorisation for carrying out trust activities. The CBSM has the power to suspend or revoke the authorisation. By means of a the CBSM regulation trustees are prohibited to delegate the selection of investments to banks or investment companies established or administered in high-risks jurisdictions. In case a FI acts as PT specific provisions regarding the book of events and quarterly reporting requirements to the CBSM apply.

551. The Office of the Trust Register (at the CBSM) also carries out some basic measures such as validity and completeness checks regarding the registration of trusts and their BOs.

552. The combination of the different mitigating measures described above provide a solid framework for preventing of abuse of legal persons and arrangements for ML/TF purposes. However, the deficiencies identified in relation to the beneficial ownership information held by the beneficial ownership registers being not accurate and up-to-date at all times (see below 5.1.5) affect this framework.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

553. There are three different mechanisms for competent authorities to access to basic and beneficial ownership information: 1) through information held by registers, 2) through information held by the legal persons concerned, 3) through information held by OEs. In general, these three mechanisms provide the authorities with access to adequate basic and beneficial ownership information without impediment in a timely manner.

554. In order to enhance the adequacy of beneficial ownership information the FIA and the OCA have issued respectively FIA Instruction and OCA Circular no. 1/2018 with identical information – including specific codes – for a uniform beneficial ownership identification. These guidelines shall help competent authorities and the private sector to uniformly identify the BOs. OEs have to report to the FIA if they encounter inconsistencies between the beneficial owner as verified during the CDD process and the, and the beneficial owner due to ongoing CDD and transaction monitoring. Until 30 June 2020 the FIA has received a total 22 of such reports. After an analysis the FIA may forward these reports after to the JA for criminal investigations. During the duration of the criminal investigations the relevant inconsistencies are not being integrated into the Register of Beneficial Owners of Legal Persons and are therefore not made visible to other competent authorities. This represents a lack of beneficial ownership data quality in the register and may have serious impacts on other authorities’ decisions to investigate a case, if they are not aware that there is an inconsistency regarding the person registered as beneficial owner in the register. In addition, concerns remain whether the information held in the Register of Beneficial Owners of Legal Persons is accurate and up-to-date due to the absence of appropriate measures to ensure it (e.g. legal requirements to report independently of changes in the beneficial ownership, possibility to report discrepancies to the various registers and making these discrepancies visible in the relevant

registers, applying relevant follow-up measures and double-checking the beneficial ownership information with already existing information).

Information held by registers:

555. All relevant competent authorities including the LEA, JA, FIA, CBSM, Tax Office, CLO can access basic information and beneficial ownership information held by the Register of Companies administered by OEA and the Register of Beneficial Owners of Companies administered by OCA through direct on-line access.

Basic information:

556. Any corporate changes shall be registered by a notary public with the Register of Companies within 30 days from the date of the meeting. Unless such changes are filed with the register they have no legal effect towards third parties (ie. constitutive effect). In turn, the OEA has ten days for registration of the changes. In practice, any corporate changes shall be entered into the Register of Companies within 45 days.

Beneficial ownership information:

557. BOs of legal persons are defined by Art. 1 *bis* of the Technical Annex to the AML/CFT law. The relevant shareholding for both direct and indirect beneficial ownership is more than 25% of shares. In case of foundations the BOs are defined as the founders (if alive), the beneficiaries (when identified or easily identifiable) and the owners discharging managerial or administrative responsibilities (i.e. the chairman of the steering committee). For the purposes of carrying out controls the FIA internally assigns codes, which are associated with a description that indicates direct and indirect shareholding of the BO in order to determine the type of BO interest. The OCA defines control through other means through checks on the companies concerned.

558. Beneficial ownership information is filed through a web application (OPEC), which is available on the web portal of San Marino's public administration. The OCA has issued specific instruction to facilitate the correct registering of data, information and documents required. In order to ensure adequate and accurate beneficial ownership information the FIA and the OCA prepared secondary and circular regulations to provide guidance to legal persons in correctly identifying their BOs, also determining the criteria according to which natural persons can be considered the ultimate BO of legal person. The OPEC system uses smart "do-it yourself" reporting forms to minimize errors when compiling the beneficial ownership information.

559. The Register of Beneficial Owners of Companies holds the following beneficial ownership information: information on the economic operator (ie name of the legal entity or name and surname of the natural person holding a license), the type of legal entity, the name and surname of the BO, citizenship and nation of residence of the BO, the date of the last amendment of the BO information, the BO interest (ie direct/indirect shareholding, beneficiaries of foundations, control by other means, etc.). There are no limitations regarding searches of the aforementioned data, fuzzy searches by partial names, surnames or company names are possible as well. The OCA informed that the Register of Beneficial Owners of Companies does not contain information if the BO of a legal persons is a domestic or foreign PEP. In addition, as regards non-resident BO a copy of a photo identification document and the tax identification number of San Marino or Italy is also registered. The Register of Beneficial Owners of Companies applies certain automatic safeguards such as an automatic upload of data from the residence register if the nation of residence of the BO is San Marino.

560. There is no legal obligation to regularly (e.g. annually or bi-annually) update the beneficial ownership information or confirm that no changes in beneficial ownership have occurred in that period. The OCA relies on the companies themselves to report any changes. Changes of the BOs of companies are entered into the register within 30 days after the date of registration with the OCA. As regards other legal entities the same deadline applies.

561. The OEA informed the AT that not all the changes occurring in the shareholdings of companies are always registered (due to the fact that since 10 April 2018 FIs are no longer obliged to communicate changes about their shareholders to the Register of Companies but to the CBSM). If the OCA gets knowledge of changes which have not been filed and which are relevant to the beneficial ownership, it may carry out a specific check and issue sanctions.

562. As for the adequacy and accuracy of the beneficial ownership information OCA relies exclusively on the legal representative of the companies and the legal professionals filing the information for the companies (76.5% of these communications are filed by legal professionals). When the legal representatives of the company or the legal professionals access to OPEC in order to fill out the beneficial ownership declaration beneficial, the system automatically connects to the Register of Companies in order to list all the companies for which the legal representative is entitled to fill out the declaration. Practically, only the legal representative of the company or a legal professional registered in REGSOC can fill out the beneficial ownership declaration in the OPEC system. Authorities also promoted the view that the constitutive effect of the registration in the Register of Companies is conducive to adequate and current beneficial ownership information. However, the OCA does not verify through additional checks whether the beneficial ownership information received is accurate and up to date.

563. Competent authorities make regular use of the Register of Beneficial Owners of Companies.

Table 44: Number of accesses by authorities to the Register of Beneficial Owners of Companies from 14 October 2019 to 30 June 2020

Authorities	Number of accesses
FIA	163
CBSM	35
Police Forces	250
OCA	14
CLO	36
Total	498

564. The Register of Companies and the Register of Beneficial Owners of Companies are not interconnected by electronic means to automatically compare the information held by each register. However, the two registers are insofar connected that the Register of Beneficial Owners of Companies automatically checks if the person filing information is also the legal representative registered in the Register of Companies. In practice that means that only the legal representative of the company or its delegate (ie a lawyer or notary) who is registered in REGSOC system can report the BOs of the company in the OPEC system. No automatic checks on the shareholding structures are carried out by means of interconnecting the two registers and there is no requirement to regularly report the beneficial ownership or confirm that no changes in beneficial ownership have occurred. The Register of Beneficial Owners of Companies applies certain automatic safeguards such as an automatic upload of data from the residence register if the nation of residence of the BO is San Marino.

565. The OCA informed that it carries out checks against the TFS lists. The OCA itself can access the register, but has no analytical capacities conduct analyses using the data held by the register.

Information on fiduciary shareholdings:

566. As regards the Register of Fiduciary Shareholdings held at the CBSM there is no requirement to regularly and independently of any changes update (1) the mandators, (2) the size of the investment attributable to each one and (3), where these are not natural persons the BOs, or to confirm that no changes have occurred. However, there is requirement by the law to update the

mandators if changed, the size of the investment attributable to each one and, where these are not natural persons the BOs or to confirm that no changes have occurred. Authorities did not provide information on other mechanisms or checks to ensure that the data is up-to-date and accurate. Ad hoc checks are only carried out by the CBSM when the authorities request data, which are not consistent with information already held by the Registry of Fiduciary Shareholdings. In addition, the last extraordinary check to control the completeness of the register and whether the information held is accurate and up to date was carried out in 2015. Authorities access the register by way of sending a written request to CBSM in paper form. Requests may be sent electronically via a secure channel only by the CLO and the OCA. CBSM must answer within 5 days, which seems to be an unreasonably long period, given the low number of requests per year. Number of requests by the authorities to the Register of Fiduciary Shareholdings held at the CBSM varies (2015 – 53; 2016 – 37; 2017 – 14; 2018 – 7, 2019 - 12; 2020 (until 30.06) - 6).

567. In general, the access to information held by the Register of Companies and Register of Beneficial Owners of Companies is timely. The information held by these registers is adequate, however access to accurate information cannot be ensured under the current regime. As regards the Register of Fiduciary Shareholdings the information seems adequate, however there are doubts whether it is up to date. In addition, there are concerns whether the access to the information can be obtained in timely manner. Consequently, it cannot be ensured that competent authorities have access to accurate and current beneficial owner information.

Information held by legal entities:

568. In addition, LEAs including the Anti-fraud squad may access basic information and beneficial ownership information held by companies at their premises (also when perform their own controls). Companies are legally obliged to keep both a register of shareholders/members and beneficial ownership information. The Anti-fraud squad informed the AT that in practice the legal entities always provide the beneficial ownership information when requested. The Anti-fraud squad also acquires the beneficial ownership information on-site at the premises of the companies and double checks it with the Register of Beneficial Owners of Companies and has so far never encountered any discrepancies with information stored in the register.

Information held by OEs:

569. The FIA has the power to access basic and beneficial ownership information held by OEs when necessary at any time upon request. The request for beneficial ownership information is included in a request made to the OEs through the STR web application. In these cases, the FIA usually sets a deadline of four to five days for reporting back, in urgent cases stricter deadlines such as on the same day are imposed. The FIA double-checks the beneficial ownership information with the register and has so far never encountered any discrepancies.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

570. BOs of a trust are the settlor, the trustee, the protector, if any, the beneficiaries, or, if the persons benefiting from the trust have not yet been determined, the category of persons in the whose main interest is established or operates the trust, any other natural person who ultimately exercises control over the trust through direct or indirect ownership or through other means. Trustees shall report to the Office of the Trust Register, for the purposes of keeping information in a register with restricted access, the information relating to the natural persons who are BOs of the trust. In the case of a resident trustee, the latter is always obliged to report the BOs. In case of a non-resident trustee the local agent is obliged to report under the conditions laid down by the AML/CFT Law (Art. 23 quarter). If none of these conditions apply, there is no reporting obligation. The communications of the BOs of the trust must take place within 6 months of the establishment of the REGTET or within 1 month from the establishment of a trust and in any case within 1 month of the change of the BO. The JA, the FIA, the CBSM, the Police Forces, the Tax Office, the CLO and the OCA

have access to the REGTET held at the CBSM in a timely, unlimited manner and free of charge, through direct telematic access. CBSM provides operating instructions on the communication methods of the beneficial ownership. OEs may access the REGTET upon request for fees to facilitate the execution of customer due diligence obligations.

571. The Office of the trust register integrates the information into the Register of Beneficial Ownership of trust, checks if identification is valid and fulfils the requirements of Art. 23 quarter AML/CFT Law, after that the office enters into the register all the information received. The Office of the Trust Register needs 5 days to enrol trustees in Trust Register and another 5 days are envisaged due to an internal arrangement (but no legal deadline) for entering the information received in writing into the electronic database of the REGTET. The same deadlines apply to amendments filed.

572. The Office of the Trust Register carries out checks on the information contained in registration request made to the Register of Trusts and the REGTET. These checks regard the sufficiency and completeness of information in the paper form used for registration of trusts with the Register of Trusts. In case of communications to the REGTET the Office of the Trust Register checks whether the communication contains: (1) a valid identity document of each BO; and (2) all persons identified as BOs of a trust (i.e. settlor, trustee, protector, if any, beneficiaries, if any). The Office of the Trust Register also adopted specific procedures in order to detect any violations of the disclosure obligation of the BOs of trusts. To that end, a system of monitoring the one-month deadline for the communication of BOs of newly registered trusts was implemented. In case the deadline is missed the Office of the Trust Register contacts the resident trustee or the local agent by reminder letter.

573. There is no obligation for authorities to report discrepancies to the register, but if encountered all authorities may report such to the CBSM. The CBSM informed that so far it never encountered any suspicious discrepancies and that discrepancies are difficult to identify during the registration process. The CBSM has also never received any reports of discrepancies from the authorities that have access to the register. In case a discrepancy or a fake registration occurred, the CBSM would note the relevant discrepancy and if there is a suspicions of ML/TF report it to the FIA.

574. The CBSM acknowledged that it does not have the similar instruments/safeguards as the OCA in order to ensure a higher data quality, such as sophisticated IT systems, smart reporting forms, automatic comparison with personal identification number or tax identification number, copy of photo identification document, etc.

575. Competent authorities infrequently access the Register of Beneficial Owners of Trust.

Table 45: Number of accesses by authorities to the REGTET

Authority	Total number of accesses	From 01 June 2019 (date of establishment)	Until 30 June 2020
JA	0	0	0
FIA	10	0	10
CBSM	1	1	0
LEAs	0	0	0
Tax Office	0	0	0
CLO	6	5	1
OCA	0	0	0
Total	17	6	11

576. The FIA has the power to access basic and beneficial ownership information held by OEs when necessary at any time upon request.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

Legal persons

Basic information

577. Failure to comply with the obligations of communication and deposit to the Registry of Companies is punishable by an administrative fine of €500 for each individual violation. Violations of the obligations in relation to the maintenance of the share register by the companies are punishable by administrative fines from €2 000 to €25 000. The competent administrative penal authority for both types of violations is the OCA. So far, no administrative penalty has ever been imposed.

Beneficial ownership information

578. Violations of the OEs to collect beneficial ownership information of their customers are punishable by administrative fines from €5 000 to €80 000 by the FIA (AML/CFT law). Failure to comply with the obligations to communicate beneficial ownership information to the Register of Beneficial Owners of Companies is punishable by administrative fines from €5 000 to €10 000, imposed by OCA (AML/CFT Law). The omission or the intentional submission of false information to the Register of Beneficial Owners of Companies is punishable by second-degree imprisonment or daily fine. According to Art. 81 of the CC the range of a second degree imprisonment goes from six months to three years, while, according to Art. 85 of the CC, second degree daily fine ranges from ten to forty days. The amount of the daily fine is determined by the judge.

579. Since June 2019 the OCA has imposed twelve penalties on companies for not having communicated the beneficial ownership information. Three companies having an active license were fined with for €5 000 each and nine companies having a suspended license were fined with €10 000 each.

580. In the period from 2014 to June 2019, the FIA transmitted to JA seven cases pertaining related to false declaration of the BOs by the customers to OEs during the CDD procedures. These cases do not refer to the omission or the intentional submission of false information to the Register of Beneficial Owners of Companies, but to the submission of false beneficial ownership declarations in the process of CDD. Of these seven cases, three cases were filed, one case is still ongoing (investigative phase) and three cases resulted in convictions of 3 natural persons and one legal person to fines of the total amount of €1 202 750.

581. As regard the reporting obligation of information to the Register of Fiduciary Shareholdings the OCA is in charge of issuing penalties for violations thereof. From 2010 to 2019 the CBSM reported nine cases of inconsistency of data to the OEA (until 2018) and the OCA (since 2019). These proceedings resulted in three sanctions 2011 against San Marino Fiduciary Companies, for a total amount of €15 000 (€5 000 each).

582. The relatively low amount of administrative fines for violating the CDD obligations in relation to beneficial ownership (€5 000 to €80 000) and the low amount of administrative fines for failure to comply with the obligations to communicate beneficial ownership information to the Register of Beneficial Owners of Companies (€5 000 to €10 000) do not represent proportionate and dissuasive sanctions. In particular, the maximum fine of €10 000 is not only low in absolute terms, but also relatively compared to the maximum fine of €80 000 for CDD violations and €25 000 for violations of the obligations in relation to the maintenance of the share register by the companies. Consequently, the regime of administrative fines does not represent an effective deterrent. The criminalization of the omission or the intentional submission of false information to the Register of Beneficial Owners, however, represents a dissuasive sanction, even though it has not yet been proved effective in practice.

Trusts

Basic information:

583. Violations of the obligation to provide basic information on trusts to the Trust Register is punishable by administrative fines. The amount of these fines are outlined in the Trust Act and range from €2 000 to €15 000.

584. From 2010 to 30 June 2020 twelve administrative sanctions proceedings were initiated; Eleven out of the twelve proceedings were concluded and found violations of obligations to provide basic information on trusts. Seven proceedings found violations of the obligation to draw up the original trust certificate within 15 days of the creation of the trust. The other proceedings concerned violations of the obligation to report amendments to the trust certificate within timelines specified by the Trust Act. One out of the twelve proceedings was archived; one is still pending. The pending proceeding concerns the failure of a trustee to appoint a new local agent following the resignation of the previous one.

585. The overall amount of the imposed administrative fines amounts to €58 288 with the highest fines-imposed amount to €15 000 for a violation of the obligation to draw up the original trust certificate within 15-days period. The lowest fine imposed amounts to €2 000 for violating the obligation to inform the Office of the Trust Register about amendments to the certificate within the 15-days period. It must be noted that there is a legal possibility to pay a reduced fine equal to 50% of the original amount if the payment is made within 60 days from receipt of the decision. In case of the eleven administrative sanctions proceedings described above all of the sanctioned subjects (9 local agents, 1 resident trustee) made use of this possibility. Hence, the overall amount paid amounts to €30 339.

Beneficial Ownership information:

586. According to the AML/CFT Law failure to comply with the obligations to communicate beneficial ownership information to the REGTET is punishable by administrative fines from €5 000 to €10 000, imposed by the Governing Council of the CBSM. The omission or the intentional submission of false beneficial ownership information to the REGTET is punishable by second-degree imprisonment or daily fine.

587. As to date, one administrative proceeding regarding the violation of the obligation to communicate the BOs of the trusts has been initiated on 29 July 2020 and is still in progress. No judicial criminal proceedings were initiated until the time of the on-site visited.

588. The level of administrative fines set out by the Trust Act for violations of communicating basic information of trusts are relatively high compared to the violation of communicating basic information of legal persons. This is to some extent compensated by the possibility of reducing the imposed fine by 50% by way of an early payment, which also impacts the dissuasiveness of sanctions. Only in two cases the maximum penalty was imposed by the Office of the Trust Register, in the other 8 cases the fines imposed remained at the lower level of the range. The low amounts of administrative fines for failure to comply with the obligations to communicate beneficial ownership information to the REGTET (€5 000 to €10 000) do not represent proportionate and dissuasive sanctions. The criminalization of the omission or the intentional submission of false information to the Register of Beneficial Owners, however, represents a dissuasive sanction, even though it has not yet been proved effective in practice.

Overall conclusions on IO.5

589. IO.5 is achieved to some extent. San Marino has taken significant steps to improve the effectiveness of its system in relation to basic and beneficial ownership information, including the establishment of beneficial ownership registers, which are accessible to all competent authorities in a timely manner. However, major improvements are needed to ensure that the information held in registers is up-to-date and accurate at all times and for all types of legal persons and legal arrangements in order to ensure that competent authorities have access to accurate and current beneficial ownership information.

590. Beneficial owner information may be accessed by LEAs in course of criminal investigations and by the FIA directly from obliged entities, if there is a connection to ML/TF.

591. Authorities demonstrated adequate understanding of the risks associated with all types of legal persons created in the country. However, major improvements are needed to fully identify, assess and understand the vulnerabilities of all types of legal persons which will further enhance the authorities' risk understanding of how they can or are being misused.

592. In addition, the regime of administrative sanctions for violations of the information requirements needs major improvements to be considered effective, proportionate and dissuasive.

593. **San Marino has achieved a moderate level of effectiveness for IO.5.**

8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

- 1) San Marino provides generally timely and constructive MLA across the range of international co-operation requests. Written guidance is made readily available to assist jurisdictions in making MLA requests.
- 2) Although there are no formal guidelines setting out an order of priority for answering requests, prioritisation is achieved on a case by case basis. The jurisdiction receives a relatively small number of requests and such requests are responded to efficiently and within a reasonable timeframe.
- 3) The case management system is effective.
- 4) The resources made available for responding to MLA requests seem to be sufficient and there are no practical or legal obstacles.
- 5) According to the provided cases and feedback from Italy, the co-operation between San Marino and Italy is very good, particularly in respect of tax matters, criminal investigations, and all forms of international cooperation.
- 6) Competent authorities engage in all forms of co-operation, including diagonal co-operation. LEAs participate in formal and informal co-operation directly or via Interpol and other co-operation platforms. There is also co-operation between supervisors and foreign counterparts regarding market entry.
- 7) A comparison of those countries which are relevant to suspicious activity reporting with those countries to which outgoing International letter of requests (ILORs) are made suggests that there are occasions when outgoing ILORs are not being made to some STR relevant jurisdictions.
- 8) Other jurisdictions have provided generally positive feedback about the assistance given by SM in providing MLA and other forms of international cooperation.
- 9) The FIA spontaneously disseminates and pro-actively seeks information exchange for the purposes of its own analysis by requesting information from its foreign counterparts. Requests usually concern information related to beneficial ownership, basic information on legal persons, accounts, business relationships and criminal records.
- 10) Competent authorities actively exchange basic and BO information on legal persons with their counterparts. The AT did not identify any obstacles in providing this type of information even though there are deficiencies noted under IO.5.

Recommended Actions

- 1) Formal prioritisation criteria for foreign requests should be established.
- 2) Written policies should be developed to bring about the systematic and proactive seeking of foreign assistance (using all available methods, including from jurisdictions other than Italy when investigating ML cases which have multi-jurisdictional transnational elements).
- 3) Checklists should be devised and followed for assistance to be sought from multiple jurisdictions in those cases where there is or may be more than one international aspect such as multiple foreign UBOs, multiple transactions involving foreign FIs and/or foreign corporations in more than one foreign jurisdiction. The risk of complex transnational

structures being used to launder in which SM may be one of many stacked jurisdictions in such a structure requires a more proactive approach.

594. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

8.2. Immediate Outcome 2 (International Cooperation)

8.2.1. Providing constructive and timely MLA and extradition

Location and Extradition of Criminals

595. There have been no incoming extradition requests from any other jurisdiction over the review period but there have been successful extraditions from San Marino in the past. In 2013 the former director of a San Marino bank, alleged to have laundered money for a mafia-type criminal association, was extradited to Italy within 10 days of the application being received. (Ref. 2013/70). There have been two outgoing extradition requests made by SM in the last 5 years. Both were for convicted prisoners who had escaped to Italy and were recovered. The extradition of individuals from San Marino works effectively.

Mutual Legal Assistance

596. The Court of San Marino is the central authority for receiving and making MLA requests. Written guidance is made readily available to assist jurisdictions in making MLA requests. Information, giving point of contacts and setting out the procedures to be followed, is available on the website of the Department of Political and Justice Affairs. There are step by step guides given to assist foreign authorities seeking MLA.

597. Incoming requests are made to the Court unless they are addressed to the Minister of Justice or Minister of Foreign Affairs, in which case they would then be referred by the Minister to the Court. Incoming requests are processed by the Registrar of the Criminal Court immediately. The case management system uses software known as "ARET" to track and manage cases. The system overall appears to be effective. The process is sufficiently resourced. A file is opened which is forwarded to one of the 2 Law Commissioners (who are Investigating Judges) who execute such requests. The Investigating Judge, assisted by a *Uditore Commissariale* (clerk) and a Secretary, processes the request, ordering the Court Registry or the police to perform the requested tasks. The number of days required to execution is typically 10-20 days (requests for integration or particularly complex cases may require slightly longer periods). On average 68 MLA requests per year are sent to the San Marino court, that is 5 or 6 per month, which are divided between the two judges. On average it takes 34 working days to execute a request.

598. Although there are no formal guidelines setting out an order of priority for answering requests, prioritisation is achieved on a case by case basis. All MLA requests are assessed to determine their level of priority and urgency based, inter alia, on the nature of the requests, the seriousness of the offence and the urgency of the case (as established by the requesting jurisdiction and/or as assessed by San Marino). For example, cases involving coercive measures, requests from higher risk countries or from countries which are geographically close and requests concerning offences of particular gravity would be prioritised (e.g. TF, ML, corruption, organized crime etc.). MLA requests with asset recovery elements are always prioritised and promptly executed.

599. The jurisdiction receives a relatively small number of requests and such requests are responded to efficiently and within a reasonable timeframe. Efforts are made to comply and assist in all cases. Guidance is issued. In the event of a likely refusal, the applicant jurisdiction is helped with perfecting its request. In under 1% of cases there may be a refusal or a partial refusal. This may be because information is missing. There has not been an issue of a conflict of jurisdiction.

600. In most cases the Investigating Judge refers the request to one of the three police forces. If it is a more complex request, then it is referred to the judicial police (made up of a total of 4 officers from all 3 forces). Tax matters might be referred to the judicial police or to the anti-fraud squad. The judicial police access registers and banking information. The identification of beneficial owners is normally one of many requests made by a jurisdiction. Since the previous MER, the FIA have not been involved in answering incoming MLA requests.

601. The Sammarinese authorities maintain the confidentiality of MLA and extradition requests and of the information contained in them. There are no obstacles that impede or hinder international judicial cooperation when San Marino is the requested party. The dual criminality principle is not restrictively applied by SM.

602. The San Marino Authorities and particularly the FIA, spontaneously share information with foreign authorities.

603. The main requesting country by far is San Marino's main financial/economic partner Italy.

Table 46: Incoming MLA – Requesting countries

Countries	2015	2016	2017	2018	2019
Albania – AL	-	1	2	-	-
Bulgaria - BG	-	1	-	-	-
France – FR	1	-	-	1	-
Germany – DE	-	1	1	-	-
Italy – IT	47	28	22	19	44
Poland	-	-	-	-	1
Romania	-	-	-	-	1
Switzerland - CH	1	-	-	-	1
Total	49	31	25	20	47

604. The range of offences which are the subject of the incoming MLA requests are shown in the Table below. The most prevalent incoming requests are for ML offences.

Table 47: Incoming MLA – Offences the subject of MLA requests⁴⁹

		2015	2016	2017	2018	2019	Total
CC Art. 199-bis	Money laundering	12	8	5	4	12	41
CC Art. 389	Tax evasion	7	6	4	6	6	29
CC Art. 204	Swindling	10	3	5	4	12	34
CC Art. 212	Fraudulent bankruptcy	6	3	4	5	0	18
CC Art. 199	Receiving stolen property	7	5	3	2	3	20
CC Art. 287	Criminal conspiracy	9	4	2	1	0	16
Law 2010/99 Art.3	Unfaithful declaration due to false invoices	7	2	2	2	0	13
CC Art. 197	Misappropriation	4	2	2	0	0	8
CC Art. 299	Falsehood in private deeds	4	1	1	0	0	6
CC Art. 196	Extortion	2	2	0	1	1	6

⁴⁹ For those offences where proceeds may be generated.

Law 2010/99 Art. 2	Use and issue of invoices for non-existent operations or services	1	1	2	1	0	5
CC Art. 194	Theft	2	0	2	0	1	5
law 1997/139	Offences related to narcotic drugs, alcoholic beverages, harmful or dangerous substances, psychotropic substances	2	1	0	0	2	5
CC Art. 211	Bankruptcy	1	1	0	0	0	2
CC Art. 287-bis	Mafia-type criminal association	2	0	0	0	0	2
CC Art. 308	Counterfeiting and alteration of marks of intellectual works and trademarks	0	0	0	2	2	4
CC Art. 373	Corruption	0	0	1	1	2	4
CC Art. 155	Personal injury	1	0	0	0	3	4
CC Art. 169	Kidnapping	1	0	0	0	0	1
CC Art. 195	Robbery	0	1	0	0	0	1
CC Art. 202	Usurpation of intangible assets	0	0	1	0	0	1
CC Art. 207	Usury	1	0	0	0	0	1
CC Art. 209	Fraudulent seizure or foreclosure	0	1	0	0	0	1
CC Art. 213	Preferential bankruptcy	0	0	0	1	0	1
CC Art. 300	Use of false deeds	1	0	0	0	0	1
CC Art. 301	Suppression of authentic deeds	1	0	0	0	0	1
CC Art. 374-bis	Instigation of corruption	0	0	1	0	0	1
CC Art. 374-ter	Embezzlement, extortion, corruption and instigation to corruption of officials from foreign States or international public organizations	0	0	1	0	0	1
CC Art. 377	Disclosure of professional secrets	0	0	1	0	0	1
CC Art. 385	Undue exercise of a profession	1	0	0	0	0	1
CC Art. 210	Distraction of seized assets	0	0	0	0	3	3
Law 1991/40	Purchase of firearms	0	0	1	0	0	1
LISF Art.134	Abusive exercise of an activity	0	0	1	0	0	1
Law 2008/92 Art.55	Non-compliance with reporting requirements	1	0	0	0	0	1
Total		83	41	39	30	47	240

605. The amounts concerned in those foreign crimes that are the subject of MLA typically add up to €30-40 million in total per year. In 2015 the figure was €206 million when there was a significant incoming request from Switzerland concerning an African country where there was grand corruption. The vast majority of these incoming requests concern Italians or Italian companies.

Confiscation/ Restraint of Assets

606. Those incoming requests specifically concerned with confiscation and seizure are summarised in the table below.

Table 48: Incoming International requests received regarding seizure and confiscation for ML predicate offences

Reference Year	Received	Seizure Requests	Confiscation Requests	Amount (€)
2014	2	2	0	4 502 155
2015	7	7	0	47 735 416
2016	2	2	0	164 140
2017	1	1	0	1 543
2018	1	1	0	557 167
2019	0	0	0	0
Total	13	13	0	52 960 421

607. The Law Commissioner is responsible for managing the proceeds of crime which are subject to seizure. The JA always endeavours to preserve the value of assets seized or confiscated. The seizure of money is managed by the Investigating Judge. Administrators have been appointed to manage assets and avoid dissipation. Items subject to seizure have also included cars, boats, art, precious stones, real estate and company shares.

Examples of a ML investigations and prosecutions arising from an incoming MLA request

608. International cooperation is also used as a source of information leading to domestic investigations and prosecutions and these criminal proceedings regularly result in confiscation.

CASE STUDY 1: (Ref. J 26/2018)

In 2014 a jurisdiction conducting a ML prosecution requested banking and financial information, including a copy of a fiduciary mandate from a SM financial company which was a shareholder in an Italian company. The request sought to identify the BO of the shares of that Italian company. After ten days the San Marino authorities provided all the requested information. Then a ML investigation was opened in San Marino.

The defendant, acting as, nominee or straw-woman had concealed the proceeds of her brother's trafficking in drugs. In 2010 and 2012 she made 3 cash deposits totalling €730 000 into a fiduciary mandate declaring (wholly unconvincingly) that such money derived from her savings. The size of the massive cash deposits was completely inconsistent with her declared income of no more than €15 000 a year. During the criminal investigation in San Marino, no alternative explanation was provided by the defendant as to the origin of the money. In 2018 she was convicted of ML and sentenced to 4 years imprisonment. The seized €730 000 was confiscated. (It might have been thought that such large cash deposits would have generated 3 STRs, but the San Marino ML investigation was triggered by the incoming MLA request not by an STR. The fiduciary company was ultimately closed down but that closure was unconnected with this matter.

CASE STUDY 2: (Decision n. 86/2016)

An Italian MLA request prompted a criminal ML investigation in San Marino. The defendant concealed drug trafficking proceeds by making cash deposits in San Marino bank accounts in the names of her relatives. The defendant's role was managing and laundering the proceeds of crimes committed by other members of a criminal association.

Requests were made to the foreign judicial authorities for evidence of ML convictions, banking documentation, wire-tapping that made it possible to prove the illicit origin of the funds. The Defendant was convicted of ML and €1.4 million confiscated.

609. The above cases are simple instances of ML. There was no example over the review period of an incoming MLA request generating a ML investigation in SM involving complex legal persons and arrangements across several jurisdictions.

MLA Conclusion

610. San Marino provides generally timely and constructive MLA across the range of international co-operation requests. Other jurisdictions have provided positive feedback about the assistance given by SM in providing MLA. According to the provided cases and feedback from Italy, the co-operation between San Marino and Italy is very good, particularly in respect of tax matters and criminal investigations.

611. An average 34 working days to process a request represents an efficient and timely turnaround.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

612. Although two convicted persons have been extradited to San Marino in the review period, there are other cases where those investigated, prosecuted, convicted and sentenced for serious ML offences have not been extradited from other jurisdictions to serve their sentences (it may be that there is a reluctance to extradite given the practical difficulty of the very limited capacity of the prison).

613. Outgoing MLA requests are prioritised in the same way as incoming ones. The magistrate in charge of making the request ensures that the request is well made and adequately supported by documentation: the facts and law are well set out. The contact details of the magistrate making the request are given, should there be a need to supply additional information. Over the review period no requests have been refused and no conflict of jurisdiction has been encountered. The making of MLA requests is adequately resourced.

614. ML offences are primarily the subject of the outgoing MLA requests. The remainder are for other financial crimes.

Table 49: Outgoing MLA – Offences subject of the MLA request

		2015	2016	2017	2018	2019	Total
CC Art. 199-bis	Money laundering	29	10	13	5	14	71
CC Art. 204	Swindling	1	9	15	6	6	37
CC Art. 197	Misappropriation	-	6	8	-	4	18
Law 2010/99 Art. 2	Use and issue of invoices for non-existent operations or services	2	4	5	2	1	14
Law 2010/99 Art. 3	Unfaithful declaration due to false invoices	1	4	3	2	2	12

CC Art. 389	Tax evasion	-	-	1	4	2	7
CC Art. 287	Criminal conspiracy	2	1	1	-	-	4
CC Art. 194	Theft	-	2	1	-	3	6
CC Art. 195	Robbery	2	-	1	-	-	3
CC Art. 297	False statements to a public official	-	-	3	-	-	3
CC Art. 299	Falsehood in private deeds	-	-	1	2	-	3
CC Art. 155	Personal injury	1	-	1	-	1	3
CC Art. 196	Extortion	-	-	2	-	1	3
CC Art. 208	Fraud in the execution of contracts	-	1	1	-	-	2
CC Art. 212	Fraudulent bankruptcy	-	-	2	-	-	2
CC Art. 300	Use of false deeds	-	-	1	1	-	2
CC Art. 198	Bad faith administration	-	-	-	1	1	2
CC Art. 209	Fraudulent seizure or foreclosure	-	1	-	-	-	1
CC Art. 210	Diversion of seized or foreclosed assets	-	-	1	-	1	2
CC Art. 211	Bankruptcy	-	-	1	-	-	1
CC Art. 252	Failure to apply precautions in the custody of weapons, explosives, bombs, gas and explosive devices	-	-	1	-	-	1
CC Art. 373	Corruption	-	1	-	-	1	2
Law 2008/92 Art.54	Omitted or false declarations regarding customers	-	-	1	-	-	1
Law 2008/92 Art.55	Non-compliance with reporting requirements	-	-	1	-	-	1
Total		38	39	64	23	37	201

615. The documentation or information requested by outgoing requests for MLA is set out in the table below.

Table 50: Documents/information requested

	2015	2016	2017	2018	2019
Service of judicial documents	18	12	20	8	25
Incumbents (interrogations, witnesses' examination, searches)	12	16	29	3	31
Seizures	2	4	2	0	0
Acquisition of banking / financial documents or other documents	15	8	11	6	1

Acquisition of ordinary criminal records (certificates)	7	4	4	1	11
Acquisition of investigation documents	11	8	10	2	12
Total	65	52	76	20	91

616. The amounts involved in total each year in these outgoing requests is as follows:

Table 51: Outgoing Rogatory letters - Amount involved

2015	2016	2017	2018	31.12.2019
€203 839 395	€13 615 421	€75 570 320	€52 863 952	€52 863 952
USD1 204 443	-	USD1 715 664	-	-
ITL1 500 000 000	-	-	-	-

617. ML in San Marino is usually of foreign predicates, hence the desirability of obtaining MLA to prove that the foreign proceeds derive from crime.

618. Outgoing ML or extradition requests are made almost exclusively to Italy as is shown by Table 53 below.

619. International co-operation by way of MLA is almost exclusively with Italy. The 2015 and 2019 NRA's advance that SM is a country through which funds, originating in Italy, 'pass through'. This is to be expected given that Italy is the main economic/financial partner for San Marino. 95% of the inflow and outflow of funds is with Italy.

620. The San Marino authorities contend that for companies located in countries other than Italy, they have observed that the beneficial owner or the person in control is almost always from Italy or San Marino and in practice the information is obtained from Italy rather than in the other country for reasons of speed and convenience. Such requests are not always made systematically and consistently. One Investigating Judge adopts one approach; a different Investigating Judge may adopt another. It is certainly easier to obtain MLA from Italy rather than elsewhere; other jurisdictions require the assistance request to be translated when those to Italy do not. When one looks at the low number of outgoing ILORs made to jurisdictions other Italy (Table 53) and compares it with the wider range jurisdictions which have been the subject of suspicious activity reporting (Table 52) and outgoing requests for co-operation made by the FIA (Table 57) or NCB Interpol (Table 59) the AT are not convinced that there are compelling efforts to proactively seek MLA engagement with all STR relevant jurisdictions.

621. A summary was disseminated by the FIA to the JA, LEAs and the CBSM on 2020.

Table 52: Jurisdictions subject to the suspicious activity reporting

<ul style="list-style-type: none"> ✚ State of residency and location of the headquarters (both for natural and legal persons) reported to the FIA: <ul style="list-style-type: none"> - 40% San Marino - 36% Italy - 5% UK ✚ Place of birth of the natural persons reported to the FIA: <ul style="list-style-type: none"> - 67% Italy - 11% San Marino - 3% Russia ✚ State of residency of the natural persons reported to the FIA: <ul style="list-style-type: none"> - 48% Italia - 29% San Marino - 3% UK
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<ul style="list-style-type: none"> ✚ Nationality of the natural persons reported to the FIA: <ul style="list-style-type: none"> - 65% Italia - 20% San Marino - < 2% Other jurisdictions fractioned ✚ Countries' headquarters of legal persons reported to the FIA: <ul style="list-style-type: none"> - 67% San Marino - 11% Italy - 11% UK - 2% Luxembourg ✚ Countries' headquarters of legal persons which are shareholders of the legal persons reported to the FIA: <ul style="list-style-type: none"> - 53% Italy - 27% San Marino - 8% UK - < 4% Other jurisdictions fractioned ✚ Nationality of natural persons who are shareholders of the legal persons reported to the FIA: <ul style="list-style-type: none"> - 60% Italy - 20% San Marino - 4% Russia - 3% UK

Table 53: Outgoing MLA- Requested countries

Countries	2015	2016	2017	2018	2019	2020*	Total
Italy - IT	30	26	39	15	30	37	177
Austria - AT	1	-	-	-	-	-	1
Bulgaria - BG	-	-	-	-	1	-	1
Denmark - DK	-	-	-	-	-	1	1
France - FR	-	-	-	-	-	2	2
Ivory Coast - CI	-	-	-	-	1	-	1
Liechtenstein - LI	-	-	-	-	-	1	1
Monaco - MC	-	-	1	-	-	1	2
Montenegro - ME	1	-	-	-	-	-	1
Malaysia - MY	-	-	1	-	-	-	1
Netherlands - NL	-	-	-	-	-	1	1
Poland - PL	-	-	-	-	1	-	1
Romania - RO	-	-	-	1	-	-	1
Switzerland - CH	1	-	1	-	-	-	2
Sweden - SE	-	-	1	-	-	-	1
Ukraine - UA	-	-	-	-	1	-	1
United Kingdom - UK	-	-	-	-	-	1	1
United States - US	-	-	-	-	-	2	2
All Countries	33	26	43	16	34	46	198
*As at 9.10.2020							

Examples of a ML investigations and prosecutions arising from an outgoing MLA request.

622. Examples of ML investigations and prosecutions using evidence obtained by outgoing MLA requests are as follows:

CASE STUDY 3: (Ref. J. Decision n.71/2018)

The defendants A and B, who were 3rd party money launderers, transferred and concealed €1 million originating from arms and drugs trafficking into a SM bank account. The account was opened by defendant A but defendant B was delegated to operate it. The sums were deposited by a combination of cash, bankers' drafts, cheques and bank transfers. The funds were then withdrawn in cash or transferred either to another account opened in defendant A's name with a financial company in San Marino or to a Cypriot account opened in the name of a non-existent company. Three MLA requests enabled the following evidence to be obtained: the product of the financial analysis conducted by the Italian *Guardia di Finanza* on the illicit origin of the sums and copies of two judgments issued by the Italian Court establishing the commission of the predicate offences. The defendants were convicted of ML and the sums confiscated.

CASE STUDY 4: (Ref. J. Decision n.91/2018)

The FIA reported some anomalies in the relationships signed by A and B with some San Marino financial intermediaries. A ML investigation revealed that A and B carried out several operations to transfer, convert and conceal the proceeds of crime. A and B opened a joint current bank account in San Marino into which they placed €2 million by way of a bank transfer purporting to be from a company (which, in fact, did not exist.)

After MLA requests, the foreign authority provided evidence of the defendants' capital, income and tax records together with banking evidence of the accounts from which the sums were transferred into the SM bank account. This material undermined the veracity of the explanation given by the defendants and their assertions that the sums concerned were legitimate rather than criminal in origin. One defendant was convicted (the other acquitted) and the sums were confiscated.

CASE STUDY 5: The FIU to FIU co-operation and MLA.

After receiving a STR the FIA engaged in FIU to FIU co-operation with four other FIUs in respect of the laundering in San Marino of part of the proceeds of a complex €250 million pension fraud which was being investigated jointly in 2 other jurisdictions. The FIA conducted further analysis: foreign companies ("A" and "B") were used to place credits which were the proceeds of this pension fraud (disguised as loan repayments) in SM accounts. One or more of the SM accounts were then used in an attempt to return some of these laundered proceeds to the beneficial owner of company "C" (under the pretext of being fees due to C from companies A and B for an introduction agreement.) The beneficial owner of company C being the architect of the predicate fraud (and the main subject of the foreign fraud investigation.)

The BO of company "C" as well as the former legal representative of the company (which held the accounts in San Marino) were investigated (with others) in the joint foreign investigation of the predicate criminality. The FIA obtained permission to disseminate (for intelligence purposes) the information provided by the foreign FIUs (including information on the beneficial owner of company "C".)

The FIA ordered the monitoring of the San Marino accounts (8 days after receipt of the STR). The FIA disseminated to the San Marino JA for suspected ML (21 days after receiving the STR together with additional reports.)

The Investigating Judge opened criminal proceedings against the legal representative of the reported foreign company and the person who (by virtue of a power of attorney) opened the accounts at the San Marino bank. The Investigating Judge seized the funds (about €1,45 million) in a few days.

The Investigating Judge sent a MLA request to the competent authorities of the countries involved, interviewed one of the suspects and requested the FIA to examine further documentation gathered for an in-depth investigation. Because of the Sammarinese MLA request, the foreign authority of the Country in which the predicate offences were committed became aware of the transit of a part of the funds they were looking for. That jurisdiction followed up with its own MLA request, acquiring more detail on the case (including beneficial ownership information arising from CDD procedures).

At the end of 2018, a delegation of the San Marino JA participated in a coordination meeting which took place at *Eurojust* concerning this case. The other countries were investigating the predicate criminality; San Marino was the first of the group to be investigating the ML. The defendants were charged with ML in San Marino in May 2019. The legal representative of the reported foreign company was convicted of ML and sentenced to 5 years imprisonment, fined, disqualified and about €1,45 million was confiscated. The person who (by virtue of a power of attorney) opened the accounts at the San Marino bank was acquitted because of insufficient evidence in respect of the subjective element.

Outgoing requests of other jurisdictions to execute equivalent value confiscation orders

623. Below are some examples of MLA which have been used during investigations/prosecutions in San Marino with outgoing requests then being made at a later stage for the execution of equivalent value confiscation orders.

Table 54: Examples of MLA used to execute equivalent value confiscation orders in San Marino

Final Judgement	Confiscation of equivalent value	Date of request sent from San Marino to execute equivalent value confiscation orders	Status
Conviction 86/2016	16 159	11.10.2018	ongoing
Conviction 36/2017	19 477	11.10.2018	granted
Conviction 9/2013	605 184	04.09.2013 11.10.2018	ongoing
Conviction 72/2016	390 330	10.10.2018	ongoing
Conviction 134/2016	112 500	09.10.2018	granted
Conviction 171/2016	203 000	10.10.2018	ongoing
Acquittal 1/2017	499 000	10.10.2018	granted
Conviction 93/2017	476 040	20.10.2018	ongoing
Conviction 2/2018	610 875	11.10.2018	ongoing
Conviction	24 891	11.10.2018	granted

8.2.3. Seeking other forms of international cooperation for AML/CFT purposes

624. There are a number of international co-operation arrangements with other countries in the fields of financial intelligence, supervision and law enforcement (including bilateral and multilateral MOUs, treaties, co-operation based on reciprocity, or other co-operation mechanisms).

FIU to FIU co-operation in respect of financial intelligence.

625. Under Art. 16(6) of the AML/CFT Law, the FIA is not required to conclude MOUs to cooperate with foreign FIUs but is empowered to sign such MOUs with FIUs that may require a MOU to cooperate.

626. According to the “high level principles and policies governing FIA activities related to international exchange of information,” when the FIA receives a request to enter into MOUs, the FIA shall consider prioritizing requests that come from counterparts that require MOUs by law and that are related to FIUs whose Countries represent ML/TF “threats”/“risk” for San Marino (as resulting from the NRA, FIA strategic analysis and other assessments). The most requested FIU is that of Italy, which does not require a MOU to cooperate effectively.

627. The FIA has signed 54 bilateral MOUs with foreign FIUs (the list of agreements signed by the FIA is published on the FIA website in the “International relations” section).⁵⁰

628. The FIA has been a member of the Egmont Group since 2005 and it exchanges information with foreign FIUs via the Egmont Secure Web to which only the Directorate and the staff of the FIA have access. When the FIA, in order to reply to a foreign FIU request, has to request information from obliged parties (such as account transactions, data on beneficial ownership, other CDD procedures information or other documents/information), it does not mention the fact that the information is required by another FIU. Before disseminating information (along with its financial analysis) to the San Marino competent authorities (usually, to the Investigating Judge), the FIA obtains the necessary consent from the foreign FIU. If this is not obtained, there is no dissemination. To date, there have been no confidentiality breaches nor have any concerns been expressed by the FIA’s foreign counterparts in that regard. There are no legal, operational or judicial issues that impede or hinder FIU to FIU cooperation.

629. The FIA can and does cooperate with foreign FIUs for “diagonal” purposes. In particular, the FIU may send or receive requests to/from foreign FIUs originating from other authorities (Judicial Authorities, Police Forces, financial supervisors). When the FIA receives – especially from Italy – requests for information originating from foreign non-counterparts (especially JA/Prosecutors and Investigative Authorities/Police Forces) the FIA gives consent to disseminate only for intelligence in the prevention of/ combating ML, predicate offences and TF. When the FIA requests information for diagonal purposes, the request specifies the national authority for which the information is requested and the related purpose of the request. Requests for diagonal co-operation sent are detailed as follows:

Table 55: FIA - Requests for diagonal co-operation sent (outgoing requests)

Year	Requests for cooperation	Requests for diagonal cooperation	%	"diagonal" requesting entities		
				LEAs	Court (Investigating Judge)	Central Bank
2014	42	1	2%	0	0	1

⁵⁰ <https://www.aif.sm/site/en/home/international-relations/agreements-signed-with-other-fius.html>

2015	78	7	9%	0	0	7
2016	39	3	8%	0	3	0
2017	26	1	4%	0	1	0
2018	72	10	14%	0	8	2
2019	61	0	0%	0	0	0
2020*	31	3	10%	1	2	0
Total	349	25	7%	1	14	10

* As at 30.06.2020

630. During the analysis of a case, when the FIA detects clear links among the suspicious transactions/persons for more than one country, if necessary, a specific request is sent to each foreign FIU for which the link has been identified. In order to promote multilateral cooperation, each request contains the list of the other FIUs to which a similar request has been sent with reference to the case under analysis. The table below shows the number of requests made.

Table 56: FIA - Requests for cooperation (sent to more than one foreign FIU)

Year	Requests for cooperation	Related cases	of which cases disseminated to more than 1 foreign FIU				%
			up to 3 foreign FIUs	up to 5 foreign FIUs	up to 10 foreign FIUs	over to 10 foreign FIUs	
2014	42	34	2	1	0	0	9%
2015	78	47	4	2	2	0	17%
2016	39	20	1	1	0	1	15%
2017	26	14	2	2	0	0	29%
2018	72	26	7	1	2	1	42%
2019	61	21	5	1	4	0	48%
2020*	31	11	1	1	0	1	27%
Total	349	173	22	9	8	3	24%

* As at 30.06.2020

631. The following table shows the main foreign FIUs of whom requests are made by the FIA:

Table 57: FIA - requests for cooperation sent (outgoing requests)

Foreign FIUs	2014	2015	2016	2017	2018	2019	2020*	Total
Italy - IT	27	40	18	11	20	12	6	134
Switzerland - CH	0	5	2	1	3	5	0	16
United States - US	0	2	1	0	2	4	1	10
United Kingdom - GB	0	2	1	0	4	1	1	9
Bulgaria - BG	0	0	0	0	5	1	2	8
Malta - MT	0	1	0	2	1	1	3	8
United Arab Emirates - AE	1	0	1	1	3	1	1	8
Hong Kong - HK	1	2	0	0	2	0	2	7
Panama - PA	0	1	2	1	3	0	0	7
Russia - RU	4	0	0	0	1	2	0	7
Other Countries**	9	25	14	10	28	34	15	135
Total	42	78	39	26	72	61	31	349

* As at 30.06.2020

** 62 different countries, each with less than 7 requests in the reference period

632. The following table shows the typical information that is requested by the FIA from its foreign counterparts:

Table 58 - Type of information requested by the FIA to foreign FIUs

Year	Requests sent	Information requested in requests for cooperation sent (outgoing requests)						
		Beneficial ownership	Companies* */ real estate/etc.	Accounts/ business relationships	FIU IT system records (STRs)	Financial analyses	LEAs records	Other
2014	42	5	4	8	39	7	40	1
2015	78	8	9	22	72	19	71	9
2016	39	5	3	8	38	11	36	1
2017	26	5	2	12	26	13	26	4
2018	72	25	20	27	71	28	70	6
2019	61	17	4	21	58	18	57	7
2020*	31	15	17	16	28	14	23	4
Total	349	80	59	114	332	110	323	32

* As at 30.06.2020
 ** Basic information on foreign companies such as shareholders, directors, main economic activity, status, financial statements, etc.

LEAs cooperation (Interpol and ARO)

633. The NCB Interpol is the “National Central Authority” responsible for establishing contacts with the competent offices and authorities of foreign states with regard to co-operation in criminal police and security matters. Interpol is responsible for the technical and operational application of international conventions and bilateral/ multilateral agreements signed and ratified by SM in the field of international police cooperation. Interpol also exercises the functions of the ARO and is the national point of contact in the framework of the following Agreements and Arrangements in the field of exchange of police information. NCB San Marino complies with the procedures provided by San Marino’s national Laws, Internal Regulation and by the Rules on the Processing of Data which establish controls and safeguards to ensure that the information exchanged by competent authorities is used only for the purpose, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority.

634. The following table shows main foreign counterparts requested by the NCB Interpol San Marino.

Table 59 - Interpol requests for cooperation sent (outgoing requests) - breakdown by countries

Foreign NCB Interpol	2014	2015	2016	2017	2018	2019	2020*	Total
Italy – IT	30	52	50	19	21	29	13	214
France – FR	3	6	3	7	4	1	0	24
United States – US	2	4	2	5	3	7	5	28
Germany – DE	2	2	3	5	3	6	0	21
Romania – RO	2	3	5	4	1	3	0	18
United Kingdom – GB	-	5	2	2	2	6	1	18

Belgium – BE	3	-	3	5	2	3	0	16
Spain – ES	2	4	2	1	1	2	1	13
Other Countries**	19	26	28	51	20	43	10	197
Groups of Countries***	10	24	9	12	5	6	2	68
Total	73	126	107	111	62	106	32	617
* As at 30.06.2020								
** No. 64 different Countries, each with less than 10 requests in the reference period								
*** Requests sent to Groups of Countries (as IPCQ, Zone 2 Europe, Zone 3 Middle East & North Africa, Zone 7 Asia)								

635. The following table shows the main offences/crimes mentioned in the requests sent by the NCB Interpol San Marino to its foreign counterparts.

Table 60 - Interpol requests for cooperation sent (outgoing requests) - breakdown by crimes

Offences/crimes*		2014	2015	2016	2017	2018	2019	2020**	Total
CC Art. 194	Theft	2	35	52	45	26	16	4	180
CC Art. 204	Swindling	22	20	30	35	16	20	7	150
CC Art. 199-bis	Money laundering	11	10	15	14	7	24	2	83
CC Art. 197	Misappropriation	7	30	0	6	2	6	1	52
CC Art. 204-bis	Misuse of credit cards or similar devices	3	19	0	6	3	13	12	56
CC Art. 244	Illegal production, trading and prescription of narcotic drugs	22	1	3	0	2	12	0	40
	Other offences/crimes**	19	21	11	26	6	15	6	104
Total		86	136	111	132	62	106	32	665
* Each request sent may refer to 1 or more offences/crimes									
** As at 30.06.2020									
*** No. 22 different offences/crimes, each with less than 39 requests in the reference period									

636. The following table shows main foreign counterparts requested by the NCB Interpol San Marino (as ARO):

Table 61: ARO requests sent (outgoing requests) – breakdown by countries

Foreign NCB Interpol	2014	2015	2016	2017	2018	2019	2020*	Total
Italy – IT	-	-	-	15	1	1	-	17
Brazil – BR	-	-	-	1	-	-	-	1
Germany – DE	-	-	-	1	-	-	-	1
Morocco – MA	-	-	-	1	-	-	-	1
Romania – RO	-	-	-	1	-	-	-	1
Switzerland – CH	-	-	-	1	-	-	-	1
Total	0	0	0	20	1	1	0	22
* As at 30.06.2020								

637. The following table shows main offences/crimes mentioned in the requests sent by the NCB Interpol San Marino (as ARO) to its foreign counterparts:

Table 62: ARO requests sent (outgoing requests) - breakdown by crimes

Offences/ crimes*		2014	2015	2016	2017	2018	2019	2020**	Total
CC Art. 199-bis	Money laundering	-	-	-	20	1	1	-	21
CC Art. 207	Usury	-	-	-	-	1	-	-	1
CC Art. 244	Illegal production, trading and prescription of narcotic drugs	-	-	-	-	1	-	-	1
Total		0	0	0	20	3	1	0	24

* Each request sent may refer to 1 or more offences/crimes
** As at 30.06.2020

Supervisory Authorities

638. The CBSM can exchange information pertaining to the activity of the supervisory function, on the basis of reciprocity, with foreign supervisory authorities both at the request of foreign counterparts or on its own initiative.

639. The CBSM has a limited number of MOUs operating with foreign counterparts. Currently, the CBSM has 3 MOUs operating with foreign counterparts: CONSOB (the authority in charge of regulating and supervising the Italian financial market), the Croatian National Bank and the Liechtenstein Financial Market Authority (FMA). The exchange of information with foreign authorities does not require formalised agreements (MoUs) and information may be exchanged on the basis of reciprocity with a specific request supported by confidentiality disclaimers.

640. The FIA assists the CBSM by seeking information from foreign FIUs with a so called “diagonal cooperation” request applying Egmont Group principles. The existing MOU between the FIA and CBSM enables the CBSM to require precise information from the FIA about criminal proceedings or suspicious facts involving legal or natural persons, whether resident or non-resident.

641. Between 2014 and 2020 (as at 30.06.2020), the CBSM made a total of 4 requests to the FIA, which in turn required cooperation with 10 foreign FIUs. The CBSM also sent 4 requests to foreign counterparts directly. Even in the context of the small size of the SM financial sector, the supervisors might be more proactive in seeking international cooperation concerning the ML/TF issues in access to market or in prudential supervision.

Other forms (exchange of information in tax matters)

642. With reference to tax matters, the exchange of information function is centralised in a single unit called the CLO. The CLO is an autonomous body (not a part of the Tax Office) which functions as San Marino’s competent authority for all international agreements on exchange of information adopted by San Marino. The responsibilities of the CLO extend to San Marino’s network of TIEAs and DTCs, the MAAC.

643. The CLO is also involved in the spontaneous exchange of information. San Marino was an early adopter concerning the application of the Common Reporting Standard (CRS) for automatic exchange, starting from 2017 with respect to 2016 data, both within the framework of the OECD

and of the EU (Law No. 174/2015). The CLO is also the competent authority for the exchange of information with the United States under its FATCA agreement. San Marino is active in exchanging information through the VIES and EU new computerised custom transit system with EU Member States.

644. As of 2020, 54 bilateral international agreements (Italy included) were in force regarding exchange of information mechanisms, while the MAAC has been in force since 1st December 2015 in respect of about 140 countries.

645. Between 2014 and 2020 the CLO sent 77 requests to foreign counterparts in 4 different countries.

8.2.4. Providing other forms international cooperation for AML/CFT purposes

646. The FIA exchanges information effectively both spontaneously and on request concerning information related to ML, predicate offences (fiscal matters included) or TF and to the natural or legal person involved, even if the predicate offences are not identified or are differently defined in the various national legislations. The FIA exchanges with foreign authorities all information it is able to obtain at national level: in practice, the information from FIA IT System (as STRs filled), from obliged parties (including unreported transactions and CDD information) and through a wide range of public administration databases and other sources of information described under IO 6 (core issue 6.1). This is completed efficiently. Between 2015 and 2020 (as at 30.06.2020) the FIA responded to the 140 requests for cooperation. Half of the requests came from Italy. The responses were timely; the average response time was 12 days.

Table 63: FIA - Response time

Year	Requests for cooperation	Response time				
		within 7 days	within 30 days	over 30 days	average response time (days)	still pending/ not replied/ refused
2014	16	4	12	0	15	0
2015	31	12	15	4	17	0
2016	29	17	12	0	8	0
2017	27	14	13	0	10	0
2018	15	7	8	0	10	0
2019	33	13	17	3	15	0
2020*	5	1	3	1	17	0
Total	156	68	80	8	12	0

*As at 30.06.2020

Table 64: FIA - requests for cooperation received (incoming requests) - breakdown by countries

Foreign FIUs	2014	2015	2016	2017	2018	2019	2020*	Total
Italy - IT	8	14	13	10	9	19	3	76
Switzerland - CH	1	1	2	3	1			8
Other Countries**	7	16	14	14	5	14	2	72
Total	16	31	29	27	15	33	5	156

* As at 30.06.2020
 ** 45 different countries, each with less than 7 requests in the reference period

647. Between 2014 and 2020 (as at 30.06.2020) the FIA sent out 159 spontaneous notes of cooperation. In 2015 and 2016, the number of spontaneous notes increased due to international cooperation with Italian counterparts being enhanced because of the Italian VTC programme.

Table 65: FIA - spontaneous notes sent (outgoing notes)

Year	Spontaneous notes
2014	19
2015	55
2016	37
2017	15
2018	11
2019	11
2020*	11
Total	159

* As at 30.06.2020

Table 66: FIA - spontaneous notes sent (outgoing notes)

Foreign FIUs	2014	2015	2016	2017	2018	2019	2020*	Total
Italy - IT	18	48	37	13	11	8	5	140
Switzerland - CH	-	2	-	-	-	-	2	4
United States - US	-	-	-	1	-	1	2	4
Croatia - HR	-	1	-	-	-	-	1	2
France - FR	1	1	-	-	-	-	-	2
Other Countries**	-	3	-	1	-	2	1	7
Total	19	55	37	15	11	11	11	159

* As at 30.06.2020
 ** 7 different countries, each for 1 spontaneous note in the reference period

648. The NCB Interpol provides international co-operation effectively. Of the 101 incoming requests via Interpol for international cooperation between 2015 and 2020 (as at 30.06.2020), 43 came from Italy.

8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

649. Competent authorities exchange basic and BO information on legal persons. When an MLA request for the identification of basic and beneficial ownership information of legal persons and arrangements is received, the Court will forward such request to the Judicial Police for execution. As for the registers held by OEA and OCA: Office for Economic Activities (Basic information) The information contained in the Company Register is accessible by competent authorities (including LEAs) through a direct link to the Company Register. Basic and beneficial ownership information of legal persons is exchanged by the FIA through online direct access to the (public administration) databases “beneficial owner register”, “company register” and “economic activities (licenses) register”. The FIA may ask for information to CBSM in relation to fiduciary shares register and trusts register. The FIA can also ask directly obliged parties in order to obtain data related the CDD, including information on the beneficial ownership of the customer.

650. Table 58 on the type of information requested by the FIA to foreign FIUs provides for information on the numbers of BO requests.

651. The FIA always discloses basic and beneficial ownership information of legal persons. Generally, an abstract of the Company Register, of the Beneficial Owner Register and information related to FIs CDD procedures (i.e. the declared BO) are disseminated to foreign FIUs both in replies to foreign FIUs requests and in requests/spontaneous notes sent by the FIA to foreign FIUs. Although the AT did not identify any obstacles in providing this type of information, the deficiencies noted under IO.5 may impact the quality of the provided information.

Overall conclusions on IO.2

652. San Marino has achieved IO.2 to a very large extent and only minor improvements are needed to enhance international cooperation.

653. San Marino provides timely and constructive MLA and other forms of international cooperation. The jurisdiction receives a relatively small number of requests and such requests are responded to efficiently and within a reasonable timeframe.

654. San Marino's case system is effective, and prioritisation is achieved on a case by case basis. Competent authorities engage in all forms of co-operation, including diagonal co-operation. LEAs participate in formal and informal co-operation directly or via Interpol and other co-operation platforms. There is also co-operation between supervisors and foreign counterparts regarding market entry. Other jurisdictions have provided generally positive feedback about the assistance given by SM in providing MLA and other forms of international cooperation.

655. **San Marino is rated as having a high level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2011. This report is available from https://www.coe.int/fr/web/moneyval/jurisdictions/san_marino.

Recommendation 1 – Assessing risks and applying a risk-based approach

R.1 was added to the FATF standards in 2012, therefore was not assessed in the previous round.

Criterion 1.1 – Art. 16 *bis* of the AML/CFT Law provides legal basis for identifying and assessing the ML/TF risks. San Marino conducted its first NRA in 2015 using the World Bank Methodology. In 2020 San Marino adopted its second NRA (i.e. 2019 NRA), which illustrates the outcome of this exercise and updates the risk assessment conducted in 2015.

In addition, San Marino has analysed the misuse of legal persons by conducting assessment of ML threats related to such entities. The 2019 NRA provides quantitative data on the number of companies, the type of ownership (direct or indirect), the number and type of legal entities and sectors involved in ML cases, the nationality of shareholders. However, San Marino has not identified nor assessed ML vulnerabilities associated with legal persons nor TF threats and vulnerabilities (see also c.24.2).

No assessment of the VASPs sector has been conducted (see also c.15.3).

The FIA led NRA supported by the TCNC. All relevant stakeholders (the Court, the CBSM, Police Forces and Interpol, Tax Office, OCA/former OCSEA, OEA, CLO, Statistic Office, Chamber of Commerce, Civil Registration, Demographic and Election Office) and representatives of the private sector participated in this assessment. In the NRA, an extended set of data and information has been used.

The overall TF risk in San Marino was assessed as low. This level of TF risk is based on a thorough analysis of TF threats and vulnerabilities. Both factors are considered low. The NRA has identified and assessed possible TF vulnerabilities of financial and DNFBP sectors, including other contextual factors.

With respect to the NPO sector, San Marino had conducted an in-depth analysis of the whole sector to determine NPOs that fall under the FATF definition and are at risk (see also c.8.1).

The results of the NRAs generally appear reasonable to ensure that the ML/TF risks are properly identified and assessed.

Criterion 1.2 – The Department of Finance and Budget is responsible for coordinating the activities related to the NRA with the support of the TCNC (Art. 16 *bis* para. 2 AML/CFT Law). The TCNC has been appointed as the coordinating authority for the NRA project supported - for this task by the FIU.

Criterion 1.3 – The Sammarinese legislation requires to periodically review the national assessment of ML/TF risks and when there are new risks, major events or developments in the reference scenarios or whenever it is deemed appropriate (Art. 16 *bis* paragraph 1 letter b) of the AML/CFT

Law). The first NRA was conducted in 2015 and the updated version (second NRA) in 2019, which clearly show that San Marino keeps the risk assessment up-to-date.

Criterion 1.4 – The Department of Finance and Budget is obliged to inform the public administrations and the authorities involved in the AML/CFT system of the results of the national assessment of the ML/TF risks (paragraph 1 of Art. 16 *quarter* of the AML/CFT Law). In addition, OEs shall be informed about the results of the national assessment to facilitate the carrying out of their own ML and TF risk assessments (paragraph 4c) of Art. 16 *bis* of the AML/CFT Law).

Criterion 1.5 – The national assessment of the ML/TF risks shall be used to define priorities, allocate the resources necessary to prevent and combat ML and TF and the activities to be carried out by the public administrations and by the authorities according to the degree of risk established (paragraph 4b) of Art. 16 *bis* of the AML/CFT Law). For this purpose, the National Strategy was adopted for 2016-2018 to implement measures to prevent and mitigate ML/TF risk, which calls for to apply a RBA to allocating resources and implementing measures to prevent and mitigate ML/TF risks.

Following the approval of the second NRA in 2019, San Marino adopted the National Strategy for 2020-2022 by decision n. 15 of the Congress of State on 14 July 2020. In additional, the 2019 NRA contains Priority Actions related to formalisation level of economy, effectiveness of the customs, effectiveness of tax enforcement, financial integrity, independent audit and etc.

Criterion 1.6 – In case of electronic money Art. 16 *novies* of the AML/CFT Law provides for exemptions from certain CDD provisions set out in Articles 22 para. 1, letters a), b) and c) AML/CFT Law (i.e. identification and verification of the customer; identification and verification of the customer's beneficial owner; understanding of nature and purpose of the business relationship), Articles 23 AML/CFT Law (timing of CDD measures) and Art. 24 AML/CFT Law (failure to satisfactorily complete CDD). However, there is no assessment of ML or TF risks related to electronic money.

Art. 16 *octies* paragraph 1 of the AML/CFT Law provides for exemptions for entities performing low-risk financial activities. Accordingly, the Congress of State, by means of an *ad hoc* DD, upon proposal of the CSC, may establish the exemption of certain entities from the obligations envisaged by the AML/CFT Law provided that the certain requirements are met. These requirements ensure that a possible exemption only applies to occasional or very limited financial activities and that it is based on the national assessment of ML and TF risks or of a specific assessment of such risks. There is no assessment of ML or TF risk related to low-risk financial activities.

Criterion 1.7 - OEs are required to apply ECDD measures to manage and mitigate the ML/TF risks in specific cases, including situations when higher risks have been identified in the NRA and in their self-assessments (Art. 27 of the AML/CFT Law).

Criterion 1.8 – Where the national assessment or the self-assessment indicates a low risk of ML and TF, the obliged entity may apply SCDD measures in terms of the extension and intensity of its general CDD obligations under Art. 22 of the AML/CFT Law. Before applying SCDD measures, OEs shall ascertain that the business relationship, the occasional transaction or the professional service presents a low risk (paragraphs 1 and 2 of Art. 26 of the AML/CFT Law). Para 2 of Art. 18 of FIA Instruction 2018-002 ensures consistency of self-assessments with the NRA by FIs. However, there is no requirement for DNFBPs to assure that in case the self-assessment identifies lower risks this is consistent with the ML/TF NRAs.

Criterion 1.9 – The FIA is empowered to supervise the compliance with the obligations under the AML/CFT Law (paragraph 1 e) of Art. 4 of the AML/CFT Law). This includes requirements under R.1. For more information, see analysis of R.26 and 28.

Criterion 1.10 – Paragraph 1 of Art. 16 *quinquies* of the AML/CFT Law obliges the OEs to identify, analyse and asses the overall ML/TF risks taking into account various risk factors, including those related to the type of: transactions carried out, customers, countries or geographical areas interested

by the transactions, products and services offered, distribution channels used and how these are offered to customers. Guidelines and circulars by the FIU provide the OEs with further details about these risk factors. FIs shall also consider the risk factors set out in an FIU Circular related to CDD requirements (FIA Circular, Series: FIs no. 001 of 19 April 2018). In addition, the OEs shall also give due consideration to the results of the NRA and, when available, of the findings of the supranational risk assessment of the European Commission (paragraph 4 of Art. 16 *quinquies* of the AML/CFT Law).

The self-assessments shall be in writing, documented, updated and communicated to the FIU according to the frequency indicated by the latter (paragraph 5 of Art. 16 *quinquies* of the AML/CFT Law).

Criterion 1.11

(a) OEs shall take measures that are proportionate and adequate to the risks identified by enforcing policies, procedures and controls aimed at effectively managing and mitigating the risks of ML and TF identified by them and those identified at the national level. These policies, procedures and controls shall be adopted upon approval of the senior management (paragraphs 1 and 2 of Art. 16 *sexies* of the AML/CFT Law).

(b) The OEs upon approval from their senior management shall verify the adequacy of the policies, procedures and controls and also take enhanced measures to manage and mitigate those risks that have been identified as higher (paragraph 2 of Art. 16 *sexies* of the AML/CFT Law). In addition, with respect to FIs the FIU issued specific instructions with respect to monitoring and verifying the effectiveness of the internal control systems.

(c) See criterion 1.7.

Criterion 1.12 – SCDD measures are permitted only where low risk has been identified (see criterion 1.8).

OEs shall not apply SCDD measures when there are suspicions of ML or TF, or in situations that pose a higher risk of ML or TF (paragraph 6 of Art. 26 of the AML/CFT Law).

Weighting and Conclusion

San Marino addressed fully or to a large extent almost all requirements of R.1. However, the deficiencies identified have a lesser impact on the rating. In particular, San Marino did not properly assess the ML/TF risks associated with legal persons. To date no assessment of the VASPs sector has been conducted. **R.1 is rated LC.**

Recommendation 2 - National Cooperation and Coordination

In its 2011 MER, San Marino was rated LC with R.31 due to the fact the TCNC was established only recently, full effectiveness of the co-operation and coordination mechanism could not be fully established; examination of trends and emerging money laundering risk does not appear to be jointly examined within this mechanism, and policies and strategic directions reviewed on the basis of the risk assessment when developed.

Criterion 2.1 - Following the adoption of the first ML and TF NRA San Marino has adopted an AML/CFT Action Plan and an AML/CFT National Strategy for the three-year period 2016-2018. Following the adoption of the second NRA of 2019, San Marino adopted a new National Strategy for 2020-2022. The AML/CFT Action Plan and the Strategy are regularly reviewed. These documents are the main national AML/CFT policies, which are informed by identified risks.

Criterion 2.2 - National AML/CFT policies are determined by the CSC (paragraph 2 of Art. 48 of the Statutes of the CBSM) and ultimately by the Congress of State (Government of San Marino). The CSC

is informed and assisted by the TCNC, which by itself is composed of highest-level and high-level representatives of competent AML/CFT authorities.

Criterion 2.3

Policymaking level

The TCNC is the main body responsible for coordination and cooperation of AML/CFT policies, carrying out the functions assigned to it by paragraph 3 of Art. 15 bis of the AML/CFT Law. The TCNC is also the mechanism to exchange information domestically with each other concerning the development and implementation of AML/CFT policies.

Operational level

Chapter II of the AML/CFT Law provides for legal basis for the FIA to cooperate, coordinate and exchange information with the competent authorities. Other competent authorities have signed MoUs, in particular with the FIA. LEAs cooperate with the JA based on the provisions of the CPC. Also, they cooperate among each other based on general principles set forth in sectorial legislation, exchange information and access to databases which are populated by all LEAs. A unique Operation Centre (i.e. "Centrale Operativa") has been established to facilitate coordinative actions. The Restrictive Measurements Committee (CMR) coordinates all measures necessary to implement international financial sanctions to counter terrorist and PF.

Criterion 2.4 - The CMR is the relevant body for co-operation and co-ordination to combat PF. In carrying out its functions, the CMR shall collaborate with the JA, the Police Authority, the NCB Interpol, the FIA and the Public Administrations, also through the request for data or information, or for the production or delivery of acts or documents (Art. 3 of Law no. 57). The CMR is presided by the Foreign Affairs Department and is composed of the highest level and high level representatives of the Department of Institutional Affairs and Justice, the Department of Finance and Budget, the Police Forces, NCB Interpol and of the ARO (ARO), the FIA. The CMR shall meet periodically and, in any case, at least once a year (Art. 4 of Law no. 57).

Criterion 2.5 - San Marino adopted legislation on data protection and privacy (Law 21 December 2018, No. 171 on Protection of individuals with regard to the processing of personal data). Since the adoption of this Law initiatives have been carried out by competent authorities to approach the San Marino Data Protection Authority, which is an independent public authority and is responsible for monitoring the application of the Law 171/2018. AML/CFT authorities and the Data Protection Authority discussed the relevance of data protection in the context of the FIA, the AML/CFT requirements and data maintenance and the access to the Register of BOs in relation to legal persons.

Weighting and Conclusion

R.2 is rated C.

Recommendation 3 - Money laundering offence

San Marino was rated LC with both R.1 and R.2. in its 2011 MER.

Criterion 3.1 – The ML offence under Sammarinese law covers all the material elements required by the Palermo and Vienna conventions. The AML/CFT Law is read in conjunction with the CC. The provision of Art. 1, paragraph 2 of the AML/CFT Law originated from the need to extend the scope of the Law, to conduct that was not punishable in San Marino until August 2013 pursuant to Art. 199 bis of the CC (as Self-laundering was not punished). The offence of self-laundering (and the elimination of the clause "apart from cases of participation in the commission of the offence"), has now been introduced.

Criterion 3.2 – Sammarinese law provides for an “all crimes” approach. Art. 199 bis CC applies to proceeds of any criminal offence that constitutes a felony (*misfatto*) i.e. according to Art. 21 CC any offence committed with intent.

Criterion 3.3 – This criterion is not applicable as San Marino does not apply a threshold approach.

Criterion 3.4 – The ML offence under Art. 199bis CC extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. This has been confirmed by case law.

Criterion 3.5 – As confirmed by Sammarinese case law, it is not necessary that a person be convicted of a predicate offence when proving that assets are the proceeds of crime.

Criterion 3.6 – The predicate offences for ML extend by virtue of art. 199bis §3 CC to conduct that occurred in another country and which would have constituted a predicate offence had it occurred in San Marino.

Criterion 3.7 - The new provisions of the ML offence provide a remedy for the deficiencies with regard to the self-laundering offence identified in the previous evaluation.

Criterion 3.8 - The San Marino judicial system relies on the principle of the free evaluation of evidence by judiciary. This principle is at art. 1 §3 of the AML/CFT Law (“Knowledge, intent or purpose referred to in paragraph 2 may be inferred from objective factual circumstances.”) The principle has been expressly applied in the case-law (see for example Judge of appeal, 8 April 1999, in criminal proceeding no. 164 of 1997, id. 15 June 1999, in proceeding no. 585 of 1997). Art. 6 of Decree-Law no. 154 of 22 September 2020 (Ratifying Decree - Law No. 148 of 10 September 2020) states: “1. Knowledge, intent or purpose of the perpetrator of terrorist offences shall be inferred from objective factual circumstances”. The deciding judge does infer from objective factual circumstances the intent and knowledge required to prove the ML offence.

Criterion 3.9 – Sammarinese law punishes ML, pursuant to Art. 199 bis § 5 CC by fourth degree imprisonment (i.e. from 4 to 10 years), second-degree daily fine (i.e. from 10 to 40 days) and third degree disqualification from public offices and political rights.(i.e. from 1 to 3 years). Such sanctions may in certain circumstances be decreased (e.g. self-laundering, amounts at stake, nature of the transaction) or increased (the facts have been committed during the exercise of a commercial/professional activity subject to authorization or certification by the competent Public Authorities). These sanctions are generally comparable in severity to the sanctions San Marino imposes for related economic and financial crimes, as well as to sanctions for ML applied by other countries in the global AML/CFT network.

Criterion 3.10 – The concept of criminal liability of legal persons has been recognised in San Marino by Law No. 99 of 29 July 2013. Such liability does not preclude the criminal liability of natural persons (Art. 4 of the aforementioned law). Art. 6 of Law No. 99 provides that in case the liability of the legal person is established, the judge shall order such person to pay an amount not less than the amount of the achieved gain. The legal person can in addition be condemned to an administrative fine of €2 000 to €100 000 and be disqualified from certain contracts or funding. Finally, the judge shall order the dissolution of legal persons exclusively or primarily used for the commission of an offense. The impact of the punishment will vary according to the size of the legal person. For relatively large companies these fines will not be sufficient to be proportionate or dissuasive.

Criterion 3.11 – There is a sufficient range of ancillary offences under Sammarinese law pursuant to various provisions of the CC. These include conspiracy (art. 287 CC), attempt (Art. 26-27 CC); and aiding and abetting (art. 73 CC).

Weighting and Conclusion

656. San Marino meets all the criteria with exception of c.3.10. For relatively large companies the provided fines will not be sufficient to be proportionate or dissuasive. **R.3 is rated LC.**

Recommendation 4 - Confiscation and provisional measures

San Marino was rated LC with the previous R.3 in its 2011 MER.

Criterion 4.1 – San Marino’s confiscation regime is mainly regulated by art. 147 CC. and Law n° 100 of 29 July 2013. Sammarinese law provides for the confiscation of the following:

(a) *Property laundered and*

(b) *proceeds of (...), or instrumentalities used or intended for use in, ML or predicate offences.* Art. 147 §1 CC applies to any offense and foresees the confiscation of “*the instrumentalities that served or were destined to commit the offense and of the things being the price, product or profit thereof*”. This definition includes the “property laundered”. Confirmation of this can be found in case law.

(c) *Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisation* (Art. 147 §1 CC applies as well. Furthermore, Art. 147§10 CC provides that in case of conviction for [...] the criminal offences for the purpose of terrorism, [...] the judge shall order the confiscation of money, assets or other benefits available to the convicted person, of which the offender is not able to demonstrate the lawful origin.

(d) *Property of corresponding value.* The confiscation of property of corresponding value is foreseen under Art. 147 §8 CC.

Criterion 4.2

(a) *identify, trace and evaluate property that is subject to confiscation*

The Judiciary, law enforcement authorities and the FIU appear to have adequate powers under the CPC, the AML/CFT Law and law n° 21 of 27 February 2014 and decree-law n° 89 of 11 June 2014 to identify and trace property that is or may become subject to confiscation

(b) *carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation*

The judiciary can carry out such provisional measures under pursuant to art. 58bis and 58ter of the CPC. Instrumentalities used to commit the offense are forfeited pursuant to art. 59 CPC; freezing and seizure measures are executed without giving prior notice thereof to the person affected. Notification is given at a subsequent stage.

The FIU can block assets, funds or other resources or suspend (also upon request of the judiciary) suspect transactions pursuant to art. 5 of the AML/CFT Law.

(c) *take steps that will prevent or void actions that prejudice the country’s ability to freeze or seize or recover property that is subject to confiscation*

Assets seized are managed by and under the control of the Law Commissioner who has a duty to preserve their value.

Furthermore, according to the provisions of the AML/CFT Law the FIA has the power to suspend, also upon request by the JA, suspected transactions of money-laundering or terrorist financing, whenever this does not prejudice investigations.

In addition to these measures, art. 75 of the AML/CFT Law introduces a specific provision to prevent and counter money-laundering and terrorist financing through the voiding of any action to have access to instrumentalities which may be subject to confiscation. According to this provision, the voiding of actions such as contracts for assets or funds related to money laundering or terrorism financing enables the competent authorities to recover the property subject to confiscation. This provision has been applied twice (both in 2017).

(d) *take any appropriate investigative measures*

Sammarinese legislation (CC, AML/CFT Law, specific legislation such as legislation of 2014 on the NCB Interpol) provides the judicial authorities, LEA and FIU with a wide range of investigative measures to identify and trace assets.

Criterion 4.3 – As regards confiscation, there exists a protection of the rights of *bona fide* third parties under art. 147 §7 CC and case law.

Criterion 4.4 – San Marino has mechanisms in place for managing and dispose (after confiscation by a final judgement) seized, frozen and confiscated property. The Law Commissioner (and the State Treasury when it comes to confiscated assets) is entrusted by Sammarinese law to perform these tasks. External experts can be appointed.

Weighting and Conclusion

R.4 is rated C.

Recommendation 5 - Terrorist financing offence

San Marino was rated LC with SR.II in its 2011 MER.

Criterion 5.1 - San Marino has criminalised TF on the basis of the Terrorist Financing Convention and its Annexes, in particular under Art. 340 bis et seq. of the CC.

Criterion 5.2 – By application of i.a. Articles 340-decies CC and Art. 1 of the law n°92 of 2008 TF offenses extend to any person collecting or providing funds, assets or other economic resources knowing that they will be used to carry out terrorist attacks or by a terrorist organisation or by an individual terrorist (Art. 340-decies CC). No link to a specific terrorist act is required under Sammarinese law.

Criterion 5.2bis – The financing of the travels of individuals for the purpose of the preparation, planning or preparation of, or participation in terrorist acts, or the providing or receiving of terrorist training is considered to be a TF offense in accordance with Articles 340-octies and 340-terdecies of the CC.

Criterion 5.3 – Pursuant to Sammarinese law in general and art. 340 *decies* in particular CC, TF offenses extend to any funds, assets or other economic resources whether from a legitimate or illegitimate source.

Criterion 5.4 - The TF offences under the CC do not require that the funds, assets or other economic resources were used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

Criterion 5.5 – Pursuant to the general principles of Sammarinese law and specific legislation (cf. art. 6 decree-law 154 of 22.9.2020) the intent and knowledge required to prove the TF offense can be inferred from objective factual circumstances.

Criterion 5.6 – According to Art. 340 decies of the CC, anyone who is convicted of TF shall be punished by sixth degree imprisonment (i.e. 10 to 20 years) and fourth-degree disqualification (2-5 years) from public offices and deprivation of political rights which constitute proportionate and dissuasive sanctions.

Criterion 5.7 – As TF is considered as an offense under applicable legislation, reference is made to the developments under 3.10.

Criterion 5.8 – San Marino's CC provides for a number of ancillary offences which include: (a) attempting to commit the FT offence (Art. 26-27); (b) participation as an accomplice in a FT offence (Art. 73); (c) organising or directing others to commit a FT offence (cf. aiding and abetting); and (d) forming part of a conspiracy for the purpose of committing one or more FT offence(s) (Art. 287, 340 octies).

Criterion 5.9 – Under the “all crime” approach, FT offences are predicate offences to ML.

Criterion 5.10 – Under Art. 6 of the CC, anyone committing the offenses covered in Art. 340 bis et seq. CC outside the territory of the State is “subject to the provisions of this Code. Pursuant to the Sammarinese authorities, the TF offences cover the financing of a terrorist act regardless of whether the terrorist act is committed within the country or abroad, or whether the person alleged to have committed TF is in the same country or a different country from the one in which the terrorist(s) or terrorist organisation is located.

Weighting and Conclusion

All criteria are met, with exception of c.5.7 for which the deficiencies identified under c.3.10 apply. **R.5 is rated LC.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In the 2011 MER, San Marino was rated PC with the former SR III. There were concerns related to the scope of the freezing mechanism, as well as the coverage of the concept of funds and other assets. There were also issues with regard to the designating authority and procedures under UNSCR 1373, which were not clearly addressed in the legislation. San Marino implements UNSCRs 1267/1989 and 1988 and 1373 primarily through Law No. 57.

Criterion 6.1

(a) As stipulated under Articles 3 and 5 of the Law 57/2019 the CMR has been established, which acts as the national competent authority for proposing persons or entities to the 1267/1989 and 1988 Committees for designations.

(b) San Marino has a formal mechanism for identifying targets for designation based on the criteria set out in the relevant UNSCRs, included in the Law 57/2019, which is further complemented by the Regulation of the Congress of State referred to in Art. 2, paragraph 2 of Law No. 57 (i.e. Regulation no. 13, dated 20 November 2019). At that, the CMR is designated with the authority to, based on information received from national authorities and foreign counterparts, submit a proposal for designation to the relevant UN Committees through the Foreign Affairs Department. The Law and Regulation further provide the designation criteria and the standard forms applicable for designations.

(c) The country indicates that the evidentiary standard of proof on “reasonable basis” would be applied when deciding whether to make a proposal for designation. The proposal for designation is not dependent on existence of a criminal proceeding. This is confirmed by the list of evidence supporting the designation envisaged under Art. 6 of the Law 57/2019, which provides the element of criminal proceedings only as one type of evidence among many others.

(d) The procedure for listing is set out in Art. 5 of the Law 57/2019. The persons and entities must meet the specific criteria for inclusion in the lists in accordance with resolutions of the UN Security Council (UNSC).

(e) According to paragraph 3 of Art. 5 of the Law 57/2019 when making a proposal for designation detailed information should be presented the proposed name, reasons and factual elements in support for designation, as well as information on confidentiality of the data provided. Moreover, paragraph 4 of the same article entitles the CMR with the authority to specify whether the status of the country as a designating state may be made known.

Criterion 6.2 - In relation to designations pursuant to UNSCR 1373:

(a) The CMR acts as the national authority for making designations pursuant to UNSCR 1373 as provided under Art. 3 of the Law 57/2019. Art. 9 further stipulates that CMR should designate persons or entities with a view to their inclusion in the national list based on the information i) received from national authorities, ii) foreign counterparts or iii) otherwise acquired. This applies to persons or entities who meet the criteria for designation as provided under paragraph 2 of Art. 7 of the Law 57/2019.

(b) Articles 7 and 9 of the Law 57/2019 establish the mechanism for domestic designations by the CMR based on the information submitted by the national and foreign counterparts.

(c) According to its internal procedures, the CMR, when receiving a request, determines promptly whether the request is supported by “reasonable grounds” to suspect or to believe that the proposed designee meets the criteria for designation in UNSCR 1373. As per the requests from foreign authorities/body, the Department of Foreign Affairs urgently convenes a meeting of the CMR where such request is properly scrutinised.

(d) The standard of proof applied when deciding whether or not to make a designation pursuant UNSCR 1373, on its own motion or at the request of another country, is of “reasonable grounds”; the existence of criminal proceedings is not a necessary requirement for designation (see c.6.1(c)).

(e) Pursuant to Art. 8 of the Law 57/2019, the CMR is competent to make requests for freezing to its foreign counterparts. The same article provides the necessary elements of the request, including identifying information, and specific information supporting the designation.

Criterion 6.3

(a) Articles 3 and 9 of the Law 57/2019 empower the CMR to collect or solicit information to identify persons and entities for designation in collaboration with competent national authorities, including the JA, the Police Authority, the NCB Interpol, the Agency and the Public Administrations, also through the request for data or information, or for the production or delivery of acts or documents.

(b) The requirement of *ex parte* operations is covered under paragraph 5 of Art. 9 of the Law 57/2019.

Criterion 6.4 – Implementation of restrictive measures without delay is ensured through Art. 10 of the Law 57/2019. The Congress of the State upon proposal of the MFA, without delay shall adopt a decision implementing restrictive measures in relation to each of the UNSCRs. Amendments to the restrictive measures are also implemented through a decision of the Congress of the State whenever there are changes to the UNSCRs. Timely implementation of the updates to the consolidated lists is ensured by Art. 14 of the Law. Accordingly, the MFA and FIA act as focal points for receiving updates from the UN Committees. The updates to the lists are deemed to be automatically and immediately transposed to the national framework upon receiving information on updates from the respective committees of the UN, with no need for a separate on the updates. The updates are published on the websites of the MFA and the FIA.

In addition, Under Art. 15 (4) of the Law 57/2019, the freezing shall be effective from the date of adoption of the Congress of State decision and, in case the UN lists are updated, from the moment the Foreign Affairs Department and the FIA are notified thereof by the United Nations Security Council or one of its competent Committees.

For Resolution 1373, the freezing measures decided at the national level are also implemented immediately from the time of their publication on the MFA website. Moreover, pending the adoption of the decision, the CMR shall immediately notify the FIA on the decision to order a temporary blocking of TF related property.

Criterion 6.5 - San Marino has the following legal authorities and procedures for implementing and enforcing TFS:

(a) Art. 15 of the Law 57/2019 provides for a requirement to freeze the funds or other assets of designated persons and entities without delay. This requirement extends to all natural and legal persons, which is also confirmed by Art. 26 of the Law 57/2019, stipulating that anyone should be sanctionable for the circumvention of freezing measures. Under the mechanism established for enforcing TFS a prior notice is prohibited.

(b) According to Art. 1 (1)(c) of the Law 57/2019 freezing requirement extends to all funds or other assets funds or other assets i) that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and (ii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as (iii) funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. Based on San Marino legislation the funds and other assets should not necessarily be connected to a terrorist act, plot or threat. The definition of funds and other assets as provided under the Law 57/2019 and its Technical Annex, extends to all types of funds and other assets as stipulated under the FATF Recommendations.

(c) Art. 15 of the Law 57/2019 prohibits making any funds, economic resources or profits derived from available to the persons or entities included in the lists, unless provided for the cases stipulated under Art. 17 of the same law (credits to current accounts of interests due on these accounts and payments due under contracts, agreements or obligations which arose prior to freezing, subject to freezing as well). The same article also prohibits from making funds or other assets, economic resources or financial or other related services available for the benefit of the entities owned or controlled, directly or indirectly, by designated persons or entities or persons and entities acting on behalf of, or at the direction of, designated persons or entities. The prohibition from making any financial services available, directly or indirectly, for the benefit of the designated persons and entities is provided by Art. 1 of the Technical Annex to the Law.

(d) The obligation of immediate communication on restrictive measures and their updates is envisaged under Art. 14 (2) and (3) of Law 57/2019, which stipulates that the FIA shall immediately notify the Court, the Police Forces, the Public Administrations responsible for keeping the public registers and the obliged parties of the updates to the UN lists and shall transmit the decisions adopted by the Congress of State. Moreover, UN lists and the updates shall be published in a special section of the website of the Ministry of Foreign Affairs. The Ministry of Foreign Affairs of San Marino has published the Guidance for the implementation of Law 57/2019 for Public Administrations, Authorities, FIs, DNFBPs and any other affected persons on their website. In addition, the FIA Instruction n. 007, "Provisions regarding restrictive measures", provides for the respective regulatory provisions on TFS for FIs. Moreover, for all OEs, on 31/01/2020 the FIA issued the publication "International sanctions", which includes also information on obligations in taking action under freezing mechanism. No specific guidelines on TFS for DNFBPs has yet been introduced.

(e) Based on Art. 24 of the Law 57/2019 following communication pursuant to Art. 14, paragraph 2 of the Law, by which FIA informs the OEs of updates to the UN lists and Congress of State decisions, the obliged parties verify whether they hold, administer or manage assets or funds subject to freezing measures. In case of positive outcome of such verification, the obliged parties shall immediately notify the FIA of actions taken. The notion of "attempted transactions" is further covered by Instruction Series: FIs no. 007 of 22/11/2019 "Provision on restrictive measures" (paragraph 6 of Art. 3).

(f) The rights of *bona fide* third parties are protected under paragraph 7 of Art. 15 of the Law 57/2019.

Criterion 6.6 - The procedures for de-listing and unfreezing the funds or assets of persons and entities which do not or no longer meet the designation criteria are established by articles 18 and 20 of the Law 57/2019.

(a) For 1267/1989 and 1988 designations, persons and entities included in the lists may apply directly to the UN sanctions Committee for de-listing. Moreover, the CMR may also apply to the relevant Committee of the UN through the MFA for a request of de-listing in accordance with procedures adopted by UN Resolutions. The persons concerned shall be promptly notified of the decision.

(b) Pursuant to UNSCR 1373, the parties concerned can address the CMR any reasoned written requests for removal from the list, which must be evaluated and resolved by the CMR, which should meet without delay and examine the request as soon as possible (Art. 20 of the Law 57/2019). In case of approval, the CMR has to take the appropriate actions to immediately notify the name to the Congress of State, which shall promptly order the revocation of the freezing measure by means of a decision. At the same time as the name is notified to the Congress of State, the CMR, through the Foreign Affairs Department, shall immediately update the national list on the website of the Ministry of Foreign Affairs.

(c) In addition to the review mechanism provided under Art. 20 of the Law 57/2019, Art. 22 of the same Law stipulates, that a concerned party may lodge an appeal either through non-judicial or through judicial procedure.

(d) As provided under Art. 10 of the Regulation of the Congress of State referred to in Art. 2, paragraph 2 of Law No. 57, persons included in the list of the 1988 Sanctions Committee or, in the event of their death or dissolution, the legitimate beneficiaries, may submit a written and motivated de-listing request directly to the Focal Point established at the UN Secretariat, in accordance with the procedures set forth in the Regulation.

(e) The ability for the persons to apply to the UN Office of the Ombudsperson with respect to designations on the Al-Qaida Sanctions List is stipulated under Art. 10 of the Regulation of the Congress of State referred to in Art. 2, paragraph 2 of Law no. 57.

(f) Art. 21 of the Law 57/2019 establishes a procedure for the CMR to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism, upon verification that the person or entity involved is not a designated person or entity. The decision should be promptly communicated to the FIA, which should in its turn transmit, without delay, such information to the Public Administrations in charge of maintaining the public registers, as well as to the obliged parties, according to the procedures considered most appropriate.

(g) Art. 19 of the Law 57/2019 provides that the FIA should, without delay, transmit the information received to the Public Administrations that maintain the public registers, as well as to the obliged parties, in the manner deemed most appropriate. This shall allow to fulfil all requirements necessary to return previously frozen assets or funds, including the registration of the removal of freezing in the public registers. Information for FIs and DNFBPs that may be holding targeted funds or other assets on their obligations to respect a de-listing or unfreezing action outside of legislation and publication of the United Nation lists is also provided on the San Marino FIA website, under chapter "Restrictive measures". In addition, the website of the MFA provides the forms in relation to de-listing and unfreezing (including for FIs and DNFBPs).

Criterion 6.7 - Access to frozen funds and other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses is stipulated under Art. 16 of the Law 57/2019.

Weighting and Conclusion

San Marino has implemented a comprehensive legal framework in relation to implementation of TF related TFS. The existing guidance for DNFBPs is too general and doesn't provide for a clear description to the OEs of their freezing obligations. **R.6 is rated LC.**

Recommendation 7 – Targeted financial sanctions related to proliferation

This is a new Recommendation which was not assessed in the 2011 MER.

Criterion 7.1 – Pursuant to Art. 10 of Law No. 57 San Marino implements without delay TFS relating to the proliferation of weapons of mass destruction and its financing.

Criterion 7.2 – The CMR is responsible for implementing TFS relating to proliferation and PF and the FIA is responsible for enforcement thereof as follows:

(a) Pursuant to Art. 10 (1) of Law 57/2019 the Congress of State adopts restrictive measures in accordance with the UNSCRs by means of a decision without delay. The restrictive measures include freezing of funds and other assets of designated persons and entities, are effective from the date of adoption of the decision according to Art. 10 (1)(a) of Law 57/2019. Under Art. 15 (5) of Law 57/2019 prior notice of the freezing is prohibited. The freezing requirement extends to all natural and legal persons.

(b) Pursuant to Art. 10 (1)(c) freezing obligations extend to assets or funds owned or controlled, wholly or jointly, directly or indirectly, by individuals, groups or entities included in the UN lists; of assets or funds derived from or generated by funds or other benefits owned or controlled, directly or indirectly, by individuals, groups or entities included in the UN lists; and of assets or funds of individuals, groups or entities acting in the interest or under the direction of the persons included in the above lists. The freezing obligation arises regardless of any connection of is not connected the funds and other assets to a particular act, plot or threat of proliferation See analysis in c.6.5(c).

(c) Pursuant to Art. 15 (2) of Law 57/2019 no assets, funds or other benefits are to be made available directly or indirectly, wholly or jointly to or for the benefit of individuals, groups or entities included in the UN lists described in c.7.2(b). The obligation extends to entities held or controlled directly or indirectly, or individuals or entities acting in the interest of or under the direction of listed individuals, groups or persons.

(d) The FIA is responsible for communicating designations to FIs, DNFBPs and Public administrators responsible for keeping public registers. According to Art. 14 (2) of Law 57/2019, the FIA shall immediately notify the Court, the Police Forces, the Public Administrations responsible for keeping the public registers and the obliged parties of the updates to the UN lists and shall transmit the decisions adopted by the Congress of State. The Ministry of Foreign Affairs of San Marino has published the Guidance for the implementation of Law 57/2019 for Public Administrations, Authorities, FIs, DNFBPs and any other affected persons on their website. In addition, the FIA Instruction n. 007, “Provisions regarding restrictive measures”, provides for the respective regulatory provisions on PF for FIs. Moreover, for all OEs, on 31/01/2020 the FIA issued the publication “International sanctions”, which includes also information on obligations in taking action under freezing mechanism. The existing guidance for DNFBPs is too general and doesn’t provide for a clear description to the OEs of their freezing obligations.

(e) Pursuant to Art. 24 of Law 57/2019 obliged parties as referred to in c.7.2(d) are obligated to verify whether they hold, administer or manage assets or funds subject to freezing measures following the communication of the designation referred to in c.7.2(d). The obliged parties shall immediately notify the FIA (a) of the freezing measures applied, indicating the individuals and entities involved and the amount and nature of the frozen assets or funds; (b) the transactions, relationships and any other available data or information relating to the aforementioned parties in case of positive outcome of such verification according to Art. 24 (2) of Law 57/2019. The notion of “*attempted transactions*” is covered by paragraph 6 of Art. 3 of the Instruction Series: FIs no. 007 of 22th November 2019 “*Provision on restrictive measures*”.

(f) Pursuant to Art. 15 (7) of Law 57/2019 bona fide third parties acting in good faith to be compliant with Law 57/2019 are exempt from liabilities that may arise from implementing TFS measures.

Criterion 7.3 – The FIA is responsible for supervising the obliged parties as described in c.7.2(d) in relation to their compliance with the obligations under R.7 according to Art. 25 of Law 57/2019. To carry out this function the FIA has the power to supervise and monitor and the power to ensure compliance by means of giving orders, investigating administrative violations and applying administrative sanctions. Reporting entities for failure to comply with Law 57/2019 are subject to administrative sanctions in accordance with provisions of articles 67bis -74 bis of AML/CFT Law. As proliferation and PF are criminalized in San Marino, criminal sanctions are applied according to general principles and regulations. In relation to criminal sections anyone can be held liable for PF according to Art. 26 and 27 of Law 57/2019.

Criterion 7.4 – Procedures for submitting and processing of de-listing requests from the UN lists are provided for in Art. 18 of Law 57/2019.

(a) Enabling listed persons and entities to petition a request for de-listing directly to the competent UN body is regulated by Art. 18 (5) of Law 57/2019. Art. 8 subsection 1(a) of the Regulation no. 7 of the Congress of State from 25 September 2020 describes the method for submitting direct de-listing requests at the Focal Point by individuals, groups or entities included in the lists of the Sanctions Committees of the UN Security Council, with the exception of the list of the ISIL (Da'esh) and Al-Qaida Sanctions Committee, or, in the case of their death or dissolution, by their legitimate beneficiaries.

(b) Procedures for unfreezing the funds of other assets of persons and entities with the same or similar name as designated persons or entities upon verification are regulated under Art. 21 of Law 57/2019.

(c) The exemption conditions set out in UNSCRs 1718 and 2231 are covered by Art. 16 Of Law 57/2019.

(d) Pursuant to Art. 19 (3) of Law 57/2019 the FIA shall, without delay, transmit the information received from the Foreign Affairs Department regarding de-listing a name to the Public Administrations that maintain the public registers, as well as to the obliged parties. Specific relevant guidance to FIs and DNFBPs, that may be holding targeted funds or other assets on their obligations to respect a de-listing or unfreezing action outside of legislation and publication of the United Nation lists is available on the FIA (<https://www.aif.sm/site/en/home/restrictive-measures.html>) and the MFA (<http://www.esteri.sm/on-line/home/affari-esteri/dipartimento-affari-esteri/comitato-per-le-misure-restrittive.html> and <http://www.esteri.sm/on-line/home/affari-esteri/dipartimento-affari-esteri/documento1119613.html>) web-sites.

Criterion 7.5 –

(a) Crediting of current accounts frozen pursuant to UNSCRs 1718 or 2231 is by way of derogation from other provisions regulated under Art. 17 of Law 57/2019, which allows payments of interest due on these current accounts and payments due under contracts, agreements or obligations that arose prior to the date on which these accounts were frozen. Any such credit continues to be subject to freezing.

(b) Art. 9 of the Regulation of the Congress of State referred to in Art. 2 (2) of Law 57/2019 regulates the exemptions from freezing activities pursuant to UNSCR 1737 and continued by UNSCR 2231, or taken pursuant to UNSCR 2231.

Weighting and Conclusion

San Marino meets almost all requirements under R.7, nevertheless there are some minor deficiencies of procedural nature, e.g. lack of guidance for DNFBPs. **R.7 is rated LC.**

Recommendation 8 – Non-profit organisations

In its 2011 MER San Marino was rated LC with the former SR.VIII due to fact that the effective implementation of the newly adopted requirements by the NPO sector and of administrative penalties could not be assessed given the recent adoption of those requirements and the fact that the transitional period under the new legislation was still ongoing. This could have impacted on the up to datedness of the information kept by the NPOs and by the Registries. It was also not demonstrated that the supervisory action has been fully effective.

Criterion 8.1

(a) The NPO sector in San Marino is made up of associations, foundations and catholic entities. The San Marino authorities have identified 5 NPOs (associations), which are falling within the FATF definition of NPOs, which are likely to be at risk of terrorist financing abuse and 31 entities (foundations and associations), which do not carry out fundraising activities as a priority, but occasional initiatives with charitable purposes in relation to specifically identified persons or projects (p. 51 of the survey and risk analysis of the non-profit sector). San Marino used relevant sources of information, such as questionnaires submitted to all associations and foundations registered in San Marino, analysis of data contained in the Registers of Associations and Foundations; analysis of financial flows to and from higher risk jurisdictions; analysis of annual financial statements. Subsequently, the FIU met with these NPOs in order to receive information about their specific activities, their fund-raising models and the operations related to money transfers and controls carried out. This information was used for the risk assessment of the identified subset of NPOs. The NRA provides the extent to which NPOs have a good understanding of TF.

(b) San Marino identified the possible threats posed by terrorist entities to the NPOs through the comparative analysis of relevant information and data available to the authorities. In April 2019, the FIA has published a document on NPOs and TF, which is publicly available on the FIA's website (in Italian only). The document however only contains some basic information, among others, on the possible forms of abuse (chapter 3.4) and indicators on suspicious activities (chapter 3.6). The San Marino authorities confirmed that the document was distributed and illustrated to the NPOs during the outreach exercise.

(c) The TCNC (as tasked by Art. 15 *bis* of the AML/CFT Law) conducted an in-depth analysis on the NPO issues in its sessions of 11 May 2017, 6 November 2018 and 29 July 2019. The objective of the analysis was to assess the adequacy of the existing initiatives and actions related to the NPO sector, such as proposals on legislative and regulatory frameworks, outreach initiatives. The outcome of the risk assessment of the sector has highlighted that local NPOs have in general sound practices for accounting and record keeping issues (p.52 of the survey and risk analysis of the NPO sector).

(d) The NRA shall be reviewed periodically (Art. 16 *bis* letter b) of the AML/CFT Law). This provision applies also to the TF risk assessment of the NPO sector. According to Art. 49 letter cc) of the Law on Foundations the Committee for Control (now OCA) shall regularly prepare questionnaires to be transmitted to foundations and NPOs (with the meaning of foundations and associations), also in collaboration with the FIA, in order to analyse the risks of abuse of NPOs. The same questionnaire was sent to catholic entities, the Diocese (Bishopric) San Marino – Montefeltro and its Curia.

Criterion 8.2

(a) San Marino promotes accountability, integrity, and public confidence in the administration and management of NPOs through several measures, such as the obligatory establishment of foundations and associations by a notary public; the registration process of foundations and associations and public access to the respective registers; the prohibition of establishing a foundation by legal persons carrying out fiduciary activities; *fit & proper* like tests in relation to the establishment and management of foundations and the establishment and management of associations; several

obligations and limitations according to Art. 6 of the Law on Associations. In addition, both foundations and associations have to comply with requirements regarding their financial management such as record keeping regarding their funding and use of funds and filing annual financial statements with the OCA (in the past with the Committee of Control).

(b) The OCA organises training courses, conferences and seminars in order to promote, also in conjunction with the FIA, information and awareness raising campaigns on the risk of ML and TF for all foundations (Art. 49 letter s) of the Law on Foundations). In the context of the Study on NPO, outreach initiatives have been undertaken. Meetings were held with NPOs when illustrating the questionnaires and information on the possible misuse of NPOs have been provided. To this aim the FIA published a document on NPOs and the risk of their misuse for TF purpose. In addition, Art. 25 of the Law on Associations provides for similar outreach function to be performed by the Council of Associations.

(c) The OCA and the FIU organise plenary and ad-hoc meetings with foundations, associations and catholic entities with a view to informing about, assessing and verifying TF risk of these entities.

(d) Associations are required to carry out financial transactions according to traceable methods defined by paragraph 11 of Art. 6 of the Law on Associations, such as imposing a threshold of more than €1 000 for the acceptance/execution of cash payments. Non-compliance shall lead to the loss of the benefits granted by the Law on Associations and to the application of the sanctions envisaged by Art. 68 of the Law on Foundations. Foundations which open bank accounts abroad or in any case establish and/or execute banking, financial and insurance relationships with foreign authorised entities, or intending to acquire, either directly or indirectly, shareholdings in companies, may do so only upon application to and decision by the Committee for Control (Art. 51 of the Law on Foundations).

Criterion 8.3 - The OCA supervises/monitors associations and foundations. To that end the OCA may make use of a wide range of powers (Art. 25 of the Law on Associations and Art. 49 of the Law on Foundations, respectively). Associations and foundations are required to apply specific measures regardless of the TF risk, such as registration of the association itself, the objectives of their activities and the identity of the administration and management, record keeping regarding funding and use of funds and filing annual financial statements. The following measure are applied towards NPOs:

(a) NPOs are required to be registered (paragraph 8 of Art. 4 of Law No. 68). This register is held at the Court Registry which is publicly available;

(b) NPOs are required provide to the Court Registry, among others, information on: (1) the objectives of their activities and (2) the identity of the following person(s): President, Secretary, member of the Board of Directors and treasurer and associates (Art. 4 of Law No. 68, art. 2 of DD no. 117 of 24 July 2014);

(c) NPOs are required to issue annual financial statements that provide detailed breakdowns of incomes and expenditures and to predispose the “funding and use” forms and deposit them at the Committee for Control (Art. 37 of Law 129/2010, Art. 25, par. 4, letter g) of Law 75/2016);

(d) NPOs are required to register data and information regarding funding and funds received and use thereof. Such data shall be kept for at least 5 years (Art. 37 of Law 129/2010, Art. 39, par. 3 of Law 101/2015).

Criterion 8.4

(a) The OCA supervises/monitors associations and foundations. To that end the OCA may make use of a wide range of powers (Art. 25 of the Law on Associations and Art. 49 of the Law on Foundations, respectively).

(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 OCA has the

power to penalise the governing council with a pecuniary administrative sanction between €1 000 and €5 000 or the foundation itself with a pecuniary administrative sanction between €1 000 and 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). NPOs can also be criminally liable (Art. 4 of Law 99 as of 29.07.2013). In addition, NPOs might be liquidated (Art. 10, para 4 of the Law on Foundations and Art. 37, para 7 of Law 129/2010).

Criterion 8.5

(a) Art. 49 of the Law on Foundations stipulates cooperation obligations of the OCA. Accordingly, it may request through the FIU, any information and documents concerning the relationships established by the foundations for the purpose of performing its functions (paragraph 1 letter t)) and shall report to the JA facts and circumstances which could constitute a crime, by providing any information and/or documents useful for investigations (paragraph 1 letter v)). According to paragraph 2 of Art. 11 of the Law on Associations the Council of Associations shall assist the Committee for Control in all its activities, in order to facilitate and simplify compliance with the ML/TF requirements of associations.

(b) The police corps are required to report to the Committee for Control any facts constituting administrative offences in matters relating to foundations and to provide all evidence to said Committee; they shall also be required to carry out investigations and assessments requested by the Committee for Control and to support the investigations carried out directly by said Committee (paragraph 5 of Art. 66 of the Law on Foundations). The Gendarmerie conducts activities and investigations for the prevention of terrorism and FT related cases through a constant and careful monitoring of NPOs. However, it is not clear, if the investigative expertise and capability of the police corps also applies to cases involving associations.

(c) LEA have full access to information on the NPOs' administration and management by requesting it from the OCA. LEAs may access the headquarters of domestic NPOs and obtain access to all necessary documents and information (also by compulsory way) in line with the relevant laws and regulations (Art. 15 *quater* of the Decree Law 17 of August 2016, no.108;). In the course of criminal investigation, when LEAs operate as Judicial Police under the mandate of Investigating Judge, the power to obtain information and documents is based on a court order.

(d) According to Art. 49 Law on Foundations the Committee of Control shall:

- report to the JA facts and circumstances which could constitute a crime, by providing any information and/or documents useful for investigations (para. 1 letter v);
- report to the JA any serious facts for the adoption of measures falling within its competence (para. 1 letter z);
- collaborate with the FIA to implement coordination with a view to ensuring exchange of information domestically and internationally in order to effectively prevent and counter ML and TF, by reporting anomalies and/or suspected violations of the provisions contained in the AML/CFT Law (para. 1 letter bb).
- As for associations and catholic entities the general obligation of public officials of reporting a crime to the JA also applies to the OCA in course of its activities.

Criterion 8.6 - The points of contact for international cooperation and international requests in relation to foundations are the FIU and the Committee of Control (Art. 49 letter bb) Law on Foundations). The Committee of Control collaborates with the FIA to implement coordination with a view to ensuring exchange of information domestically and internationally in order to effectively prevent and counter ML and TF, by reporting anomalies and/or suspected violations of the provisions contained in the AML/CFT Law (para. 1 letter bb). In relation to associations and catholic entities the San Marino NCB of Interpol and the FIA are the point of contact. When cooperating internationally, the FIA uses FIU-to – FIU channel (i.e. ESW) for which internal procedures are set by

the FIA mirroring EG procedures. The San Marino NCB has implemented the Rules on the Processing of Data (RPD) of the ICPO-INTERPOL, in order to ensure the efficiency and the quality of international cooperation between criminal police authorities through the INTERPOL channels.

Weighting and Conclusion

There are few deficiencies identified that have an impact on the rating. In particular, only basic measures have been taken to identify how terrorist actors might abuse NPOs. With respect to criterion 8.5 it is not clear if the investigative expertise and capability of the police corps also applies to cases involving associations. **R.8 is rated LC.**

Recommendation 9 – Financial institution secrecy laws

In the 2011 MER San Marino was rated LC with the former R.4. The deficiencies identified included the uncertainties regarding the ability of FIs to exchange information with foreign FIs from jurisdictions not considered as equivalent.

Criterion 9.1 – The banking secrecy requirement is established by Art. 36 of the LISF. In particular, the banking secrecy prohibits revealing to third parties' data and information acquired by FIs in the exercise of their reserved activities, except when an express written authorisation is obtained from the data subject. The banking secrecy applies to financial activities/services (reserved activities) listed in Attachment I to the LISF, including to such non-banking activities as fiduciary activities, investment services, insurance, and payment services. The banking secrecy is binding for FIs, their directors, employees, external auditors, agents, intermediaries, outsourcing service providers, etc. Official secrecy covers data and information of the CBSM. Professional secrecy (or legal privilege) covers information between professionals and their customers, including banking information, but the CBSM can access the same information held by the FIs.

(a) Access to information by competent authorities

Under Art. 36 (5) of the LISF, the banking secrecy cannot be invoked in relation to judges in legal proceedings, CBSM, FIA and public authorities in charge of information-exchange with foreign counterparts in line with international agreements. Art. 36 LISF does not include the Police among the parties against which banking secrecy cannot be evoked. The authorities indicated that in practice, this does not constitute an issue, given that banking secrecy is not opposed to the Police in the context of investigations, as they always act under the direction of the Law Commissioner. There have been no instances where access to such information was denied to the Police. In addition, bank secrecy shall not be opposed to the NCB Interpol in the performance of its function as ARO (Art. 5 of Decree Law No. 45 of 31st of March 2014).

In October 2013 San Marino signed the multilateral agreement for adoption of the CRS promoted by the OECD and FATCA, which was implemented through Law No. 174 of 27 November 2015. According to this law, Sammarinese FIs must report the relevant banking information covered by CRS and FATCA to the CLO on all reportable accounts (referred to or controlled by non-residents persons). Since March 2017, San Marino FIs are sending the relevant data to the CLO which, at its turn, since September 2017 is exchanging the information with all foreign counterparties adhering to the CRS.

(b) Sharing of information between competent authorities

The sharing of information between national authorities is defined by provisions on official secrecy instead of those on banking secrecy, which is binding to financial supervised entities (FIs).

Official secrecy is regulated by different laws enabling national authorities to acquire information from the CBSM Central Bank, which is entitled to supervise on the compliance with banking secrecy obligations (Art. 29 para. 3 of the Law 96/2005 - CBSM Statute; Art. 5 para. 1 letter b) of the AML/CFT Law; Art. 9 AML/CFT Law, Arts. 12 and 13 of the Law 174/2015, Art. 3, para. 1 of Decree Law 45 of 31st March 2014).

Foreign FIUs convey their requests for information or cooperation directly to the FIA, which - at its turn - can acquire any data needed directly at the FIs involved or at CBSM and share it with the foreign FIU, if there is a suspicion of ML/TF or of a predicate offence.

The CBSM shares information with foreign authorities for the suppression of the crimes of ML and TF only under the condition of full reciprocity and a guarantee of equivalent privacy standards of the foreign counterpart (Art. 103 of the LISF). Since 2011 CBSM does not need an MoU or any similar agreement with its foreign counterpart in order to share this information.

(c) Sharing of information between FIs

According to Art. 36 (6) (c) of the LISF no breach of banking secrecy will be deemed to have occurred if the information is shared with: a domestic parent company; a parent company of a foreign State with which a relevant agreement referred to in Art. 103 LISF is in force and if this is required for purposes of consolidated supervision and risk control on a group-wide basis.

The CBSM, making use of its power to issue interpretative recommendations of a general but non-binding nature, through its Recommendation 2009-01 interprets the exemption of Art. 36 (6) (a) of the LISF to the effect that the provision of information to FIs, including foreign ones, does not constitute a breach of bank secrecy when the information is sought to fulfil AML/CFT requirements by the requesting party and therefore necessary to execute the customer's request. No breach of banking secrecy will be deemed to have occurred whenever the customer consents to sharing his banking information (art. 36 (1) LISF). In addition, Art. 33 *bis* of the AML/CFT Law was introduced as a reaction to uncertainties expressed in the MER 2011 and now explicitly regulates that the cooperation of OEs with foreign counterparts. Accordingly, OEs are required to supply, upon request of a foreign entity subject to equivalent preventive measures requirements, containing an explicit reference to the need to fulfil the CDD requirements imposed by its national legislation, all information requested and necessary to meet such obligations.

Sammarinese banks acting as respondent banks are able to provide relevant CDD information upon request to the correspondent bank (Art. 33 AML/CFT Law).

Banking secrecy does not hinder the information exchange of originator or beneficiary information as envisaged by R.16.

In relation to the exchange of information required by Recommendation 17 the reliance on third parties requires that all parties involved in the process (third party, obliged entity relying upon and clients) agree on this process, meaning that the written authorisation is provided by the customer, who is client of both parties. There is no legal obligation of sharing the customer information by the third party, but in practice there will always be a specific and express written authorisation by the client to exchange his/her banking information with the obliged entity. In addition, banking secrecy does not apply to the third party when disclosing the CDD information to the relying party (art. 36 (6) a LISF).

Weighting and Conclusion

There are minor shortcomings identified: Art. 36 LISF does not include the police among the parties against which banking secrecy cannot be evoked, if the police is not acting under the direction of the Law Commissioner (c.9.1a)). There is no legal obligation of sharing the customer information by the third party (c.9.1 c)). **R.9 is rated LC.**

Recommendation 10 – Customer due diligence

San Marino was rated PC with the former R.5 in its 2011 MER. A number of issues were identified, *inter alia*, absence of domestic ML/TF risk assessment for a verification of the adequacy of the RBA; rather than providing for minimum CDD, the AML/CFT Law created blanket exemptions from the

CDD requirements; application of simplified due diligence for cases where there is suspicion of ML or TF; deficiencies in relation to risk-classification and ongoing due diligence.

Criterion 10.1 - Art. 30 of the AML/CFT Law explicitly prohibits FIs from having anonymous accounts or passbooks, or accounts and passbooks in fictitious names, as well as from using such accounts or passbooks opened abroad.

When CDD is required

Criterion 10.2 - CDD requirements are stipulated under Art. 21 of the AML/CFT Law, while further details are provided under FIA Instruction (Series: FIs no. 001 of 19.04.2018). In particular, Art. 21 (1) of the AML/CFT Law stipulates that FIs should apply CDD when:

(a) establishing a business relationship

(b) carrying out an occasional transaction equal to or exceeding €15 000, whether carried out in a single operation or in several operations, which appear linked

(c) performing occasional transactions that are wire transfers in the circumstances covered by R.16 and its Interpretive Note.

(d) there is ML/TF suspicion irrespective of any thresholds (or derogations and exemptions under Art. 3 (5) of the FIA Instruction (Series: FIs, no. 001 of 19.04.2018)

(e) there are doubts about the veracity or adequacy of the previously obtained customer identification data.

Required CDD measures for all customers

Criterion 10.3 - The AML/CFT law requires (Art. 22 (1) (a)) FIs to identify the customer, permanent or occasional, and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source. Art. 4 (1) of the FIA Instruction, Series: FIs, no. 001 of 19.04.2018 covers the requirement of identification and verification in relation to customers being a natural person, a legal person, a legal arrangement, or an entity with or without legal personality.

Criterion 10.4 - The AML/CFT Law (Art. 23² (1)) requires verification of the existence of the power of representation of a person acting on behalf of the customer, and obtaining necessary data and information to verify that person's identity.

Criterion 10.5 - The AML/CFT Law defines the beneficial owner as any natural person(s) who ultimately owns or controls, directly or indirectly, the customer or the natural person(s) on whose behalf or in any case in whose interest the business relationship, service or transaction is established, provided or carried out respectively.

Art. 22 of the AML/CFT Law requires FIs to identify and take reasonable measures to verify the identity of the beneficial owner based on reliable source data and information so that FIs are satisfied that they know who the beneficial owner is.

The AML/CFT Law further stipulates (Art. 23bis (3)) that in order to identify and verify the beneficial owner, FIs should request from their customers the relevant data and ID information, use public registers, databases, publicly available lists or lists accessible to FIs, acts or documents from which such information can be inferred, or obtain information in other ways. Detailed information on the types of data and information are provided under FIA Instruction Series: FIs, no. 001 of 19/04/2018.

Criterion 10.6 - Art. 22 (c) of the AML/CFT Law requires FIs to understand and obtain information on the purpose and intended nature of the business relationship or professional activities. If there is a high risk of money laundering and terrorism financing, the activity of understanding and obtaining information on the purpose and intended nature shall also apply to occasional transactions other than professional activities.

Criterion 10.7 - Art. 22 (1) (d) of the AML/CFT Law requires FIs to conduct ongoing monitoring of the business relationship by (i) scrutinizing transactions undertaken throughout the course of that relationship to ensure that those transactions are consistent with the FI's knowledge of the customer, the business and risk profile and, where necessary, the source of funds, and (ii) ensuring that the documents, data or information held are kept up-to-date. Art. 13 of the FIA Instruction, Series: FIs, no. 002 of 19.04.2018 establishes rules regarding the timing and frequency of updating the data, information and documents to be acquired. In case of a higher risk of ML/TF, the FIs shall perform, more frequently, a review of documents, data and previously obtained information and, if necessary, carry out additional verifications on the customer's transactions.

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8 - Art. 23² (2) of the AML/CFT law sets the requirement to understand the economic activity performed by the customer, as well as the relevant ownership and control structure. The notion of customer includes both legal persons and arrangements as set out under the definitions of the AML/CFT law.

Criterion 10.9 - The general requirement to identify and verify legal persons and legal arrangements is set in Art. 22 of the AML/CFT Law, while further details are provided in the FIA Instruction (Series: FIs, no. 001 of 19.04.2018). Obligations for trustees and fiduciaries are stipulated under Art. 22 bis of the AML/CFT Law.

(a) Art. 8 and Art. 9 of the FIA Instruction (Series: FIs, no. 001 of 19.04.2018) set out the procedures for identification and verification of companies and entities with or without a legal personality and legal arrangements respectively, which include gathering information on the name and form and verifying the same. As for the proof of existence, this is set in Art. 10 of the same instruction.

(b) Art. 10 (1) (a) of the FIA Instruction requires obtaining a certificate of good standing for legal persons (which in San Marino also includes the names of senior managing officials), and shareholders' meeting resolution or board of directors' resolution. These documents need to indicate the name and any subsequent relevant amendments of the legal representative(s) and of the person(s) with power of attorney, to verify that every person acting on behalf of the entity is duly authorised. As for legal arrangements a copy of the trust deed or of the fiduciary agreement, data on trustee, fiduciary and any other agent acting for the legal arrangement shall also be obtained among other documents.

(c) Art. 8 (1) (f) of the FIA Instruction requires obtaining the address of the registered office and, if different, the address of the administrative office for legal persons. In relation to legal arrangements, the address of the registered office (or of residence) must be obtained. These data must be verified based on the documents referred to above.

Criterion 10.10 - The beneficial owner of a legal person with share capital is specifically defined by Art. 1² of the Technical Annex to the AML/CFT Law and this definition is further specified by the FIA Instruction (Series: FIs, no. 001 of 19.04.2018).

(a) & (b) - The natural person(s) who ultimately owns or controls a legal person through direct or indirect ownership of a sufficient percentage of shares, units or instruments granting voting rights or through control via other means is considered the beneficial owner under Art 12 (1) (a) of the Technical Annex to the AML/CFT Law. The significant shareholding is defined as the ownership of more than 25% of shares in a legal person.

The FIA Instruction defines the "control via other means" as a dominant influence of one or more natural persons, even in the absence of the formal ownership of shares/quotas, over other shareholders/partners which results in a de facto control over the company (Art. 15 (4)).

In case of legal persons without share capital (e.g. foundations) or similar entities without legal personality, Art. 12 (5) of the Technical Annex to the AML/CFT Law stipulates that beneficial owners shall include (a) the founders, if alive; (b) the beneficiaries, when identified or easily identifiable.

(c) If, after having exhausted all possible means, no person is identified under (a) & (b) above, or if there is any doubt that the person identified is the beneficial owner, the natural person(s) who hold the position of administrative or managing official(s) in a legal person shall be considered as the beneficial owner under Art. 12 (1) (b) of the Technical Annex to the AML/CFT Law.

The FIA Instruction defines administrative or managing official(s) as individuals who are entitled with managerial and administrative responsibilities (e.g. director, chief executive officer). Where impossible to identify a concentration or predominance of powers in one or more members of a collegial body, the legal representative is deemed to be the beneficial owner.

The above legal provisions do not apply to companies that are listed on a regulated market and are subject to reporting requirements, which ensure the adequate transparency of information on ownership structure and beneficial ownership under Art. 1 bis, para 3 of the Technical Annex to the AML/CFT Law.

In case of legal persons without share capital or similar entities without legal personality BO shall also include the owners discharging managerial or administrative responsibilities.

Criterion 10.11 - The beneficial owners of trusts are defined under Art. 1² (6) of the Technical Annex to the AML/CFT Law and include: the settlor; the trustee(s); the protector (if any); the beneficiaries (or where the persons benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates); and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

In case of beneficiaries of trusts that are designated by characteristics or by class, FIs are required to obtain the information concerning those beneficiaries which they deem sufficient to establish their identity at the time of payment or when they exercise the rights they have been conferred upon (Art. 1² (7) of the Technical Annex to the AML/CFT Law).

In relation to legal arrangements other than trusts, Art. 1² (8) of the Technical Annex to the AML/CFT Law stipulates that those natural persons that hold equivalent or similar positions to those referred to above shall be considered as beneficial owners.

CDD for beneficiaries of life-insurance policies

Criterion 10.12 - Art. 23³ of the AML/CFT Law stipulates that in case of life or other investment-related insurance, FIs shall, in addition to CDD measures, apply the following measures:

(a) obtain the name or denomination of the person specifically identified as a beneficiary. Beneficiary of a life or other investment-related insurance can be natural, legal person or legal arrangement

(b) in case of beneficiaries designated by characteristics or by class or by other means, obtain sufficient information to enable the FI to establish the identity of the beneficiary at the time of the payout of the capital or return on capital. (c) In all of the above cases the verification of the identity of beneficiaries shall take place at the time of the disbursement of capital or return on capital.

Criterion 10.13 - Art. 23³ of the AML/CFT Law stipulates that where the life or other investment-related insurance is assigned, in whole or in part, to a third party, the FI aware of the assignment shall identify the beneficial owner of the beneficiary at the time of the assignment. Moreover, para 2bis, states that obliged parties shall be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether ECDD measures are applicable. Where obliged parties determine that a beneficiary, other than a natural person, presents a higher risk, they shall be required to take enhanced measures, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of payout of the capital or return on capital.

Timing of verification

Criterion 10.14 - Art. 23 (1) of the AML/CFT Law sets forth the requirement to identify and verify the identity of the customer and the beneficial owner before establishing a business relationship, assigning the professional service or carrying out an occasional transaction.

Verification of the identity of the customer and the beneficial owner can be postponed after the establishment of a business relationship or the assignment of a professional service provided that:

(a) verification shall be completed as soon as possible after the first contact with the customer and, in any case, before carrying out financial or assets-related transactions

(b) it is necessary not to interrupt the normal conduct of business

(c) ML/TF risks are low or can be adequately managed.

Criterion 10.15 - Art. 23 (1) of the AML/CFT Law requires FIs that allow operations before the completion of verification of the customer and the beneficial owner to adopt internal procedures for managing ML/TF risks, which define the conditions under which the operations can be allowed.

Existing customers

Criterion 10.16 - Art. 25 of the AML/CFT Law provides a general requirement for FIs to apply CDD measures to existing customers on the basis of their ML/TF risk level taking into account the risk variables developed by the FIA, results of the NRA and FIs' internal risk assessments. In addition, Art. 22(1)(d) of the AML/CFT Law sets the requirement for the documents, data or information held to be kept up-to-date. In cases of high-risk of ML/TF, the FIs shall review documents, data and information previously obtained more frequently and, if necessary, carry out additional verifications on the customer's transactions. Art. 95 bis of the AML/CFT Law regulates the relations which arose prior to the adoption of the Law and requires to complete the CDD requirements according to the new provisions in the deadline prescribed by the Law. Otherwise the relationships should be closed.

Risk-based approach

Criterion 10.17 - In accordance with Art. 27 of the AML/CFT law, FIs should apply enhanced CDD measures in relation to PEPs, cross-border correspondent relationships and entities located/residing in high-risk countries, and also in higher risk situations as identified on the basis of the NRA or FIs' internal ML/TF risk assessments. The FIA Instruction (no. 002 of 19/04/2018) more specifically requires the application of enhanced CDD measures in relation to customers presenting a higher ML/TF risk (Art. 7 (2) (b)).

This FIA Instruction also provides a list of enhanced CDD measures that FIs must apply in higher-risk situations (Art. 28). Moreover, Art. 27 of the same instruction provides, that FIs may apply additional enhanced measures when needed to mitigate risks.

When assessing the ML/TF risks in relation to types of customers, geographic areas and particular products, services, transactions or delivery channels, OEs shall at least consider the high-risk factors established by the FIA.

Criterion 10.18 - Art. 26 of the AML/CFT Law stipulates that FIs may apply SCDD measures in low ML/TF risk situations identified on the basis of the NRA or FIs' internal risk assessments. Before applying the SCDD measures, FIs must ascertain that the business relationship, the occasional transaction or the professional service actually presents a low risk. SCDD measures are not acceptable when there is a suspicion of ML/TF or in higher-risk situations. The FIA Instruction (no. 002 of 19/04/2018) provides examples of SCDD measures that can be applied by FIs (Art. 20 (1)).

Failure to satisfactorily complete CDD

Criterion 10.19 - Where FIs cannot comply with relevant CDD measures, Art. 24 the AML/CFT Law requires FIs (i) to not establish or continue a business relationship or carry out a transaction, including an occasional transaction, and (ii) to consider filing a STR to the FIA.

CDD and tipping-off

Criterion 10.20 - Art. 36 (4) of the FIA Instruction (Series: FIs, no. 005, 11.02.2019) stipulates that when FIs are evaluating a customer for ML/TF suspicion and there are grounds to believe that the application of further CDD measures may disclose that suspicion to the customer, FIs are required to not continue with those CDD measures and to contact the FIA for further instructions. There is no explicit requirement in the law or other enforcement means in relation to the filing of an STR.

Weighting and Conclusion

San Marino is compliant with almost all of the criteria under R.10. There is no explicit requirement to file an STR in case of reasonable belief of being tipped-off. **R.10 is rated LC.**

Recommendation 11 – Record-keeping

In 2011 MER San Marino was rated LC with the former R.10. The issues identified were related to the effective implementation of the record keeping requirements, namely, there were no implementing requirements introduced for financial promoters and parties providing professional credit recovery services. Moreover, the recent introduction of instructions for financial/fiduciary companies could not allow assessment of effective implementation.

Criterion 11.1 - Art. 34 of the AML/CFT law defines, that OEs shall maintain records and copies of the documents obtained for a period of at least five years following the end of the business relationship or carrying out of the occasional transaction or professional activity. This requirement extends both to domestic and transnational transactions. Procedural requirements are provided under FIA Instruction (Series: FIs, no. 004, 20.12.2018).

Criterion 11.2 – According to, Art. 34 (1) of the AML/CFT Law the OEs shall maintain the supporting evidence and records of business relationships, relevant transactions, occasional transactions and services provided. In particular, they shall maintain original documents or copies having the same evidentiary effects for a period of at least five years following the carrying out of the transaction or the provision of the service. FIA Instruction (Series: FIs, no. 004 of 20.12.2018) further extends this requirement on all records of business relations (which include business correspondence). The requirement on record keeping related to the results of the analysis undertaken is stipulated under Art. 8 of the DD no. 21 of 3 February 2020 ratified by Delegate Decree no. 33 of 27 February 2020.

Criterion 11.3 - Para 2bis, Art. 34 of the AML/CFT law stipulates that registration shall allow for the reconstruction of all individual transactions, so as to provide, if necessary, the evidentiary basis for the prosecution of unlawful activities. In addition to the requirements set under Art. 34 of the AML/CFT Law (as specified above), Art. 35 stipulates that the anti-money laundering electronic archive shall be established and managed according to uniform criteria that are suitable to ensure clarity, completeness, as well as timely and easy access to information. In addition, the archive shall be kept in such a way as to ensure the chronological storage of the information amended or supplemented and the possibility of inferring supplemented information. Art. 34 of AML/CFT Law provides the notion of “evidential effectiveness”, which in its turn implies that the information and documents must represent evidence to be assessed and used by the San Marino Competent authorities. The FIA Instruction (Series: FIs, no. 004, 20.12.2018) provides details on types of information to be stored.

Criterion 11.4 - Art. 34 of the AML/CFT Law provides the requirement that all data, information and documents maintained by FIs shall be made available to the FIU without delay in order to enable it to perform its tasks. In addition, data extraction requirements for OEs are stipulated under FIA Instruction (Series: FIs, no. 004, 20.12.2018), so that the produced reports may be useful for Authorities. The requirement for making available data and documents for the LEAs and supervisory authorities are stipulated under CPC and Art. 34 of Law 29 June 2005 no. 96 “Statute of the Central Bank of the Republic of San Marino” as well as Articles 41 and 42 of the LISF respectively.

Weighting and Conclusion

R.11 is rated C.

Recommendation 12 – Politically exposed persons

In the 2011 MER, San Marino was rated LC with the former R.6. The requirements of R.6 did not extend to PEPs holding prominent public functions domestically.

Criterion 12.1 - The obligation of FIs to conduct CDD in relation to PEPs is described under R.10. The PEP definition includes any individual who is or has been entrusted with prominent public functions, other than middle ranking or more junior officials. It extends to list a number of public functions and positions⁵¹, and does not refer to or distinguish between domestic and foreign PEPs.

Under Art. 27⁴ of the AML/CFT Law, where a PEP is no longer entrusted with a prominent public function, FIs are required to take into account the risks posed by that person and to apply risk-proportionate measures for at least twelve months and until such time that the person ceases to pose such risks. This timeframe of twelve months does not meet the mandatory application of enhanced measures in the FATF Standard, which has no time limit. However, the RBA would still require consideration by the subject person of the particular risks associated with the customer (and the appropriate mitigating measures).

(a) *Risk management systems* - FIs are required to have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a PEP (Art. 27² (1), the AML/CFT Law). Further requirements on appropriate risk management systems, as well as relevant procedures in this regard are provided under Art. 23 of the FIA Instruction (Series: FIs, no. 002, 19.04.2018);

(b) *Senior management approval* - FIs are required to obtain senior management approval for establishing or continuing a business relationship with PEPs (Art. 27² (2), the AML/CFT Law). Further procedural requirements are specified under Art. 24(3)(a) of the FIA Instruction (Series: FIs, no. 002, 19.04.2018).

(c) *Source of wealth and source of funds* - FIs must take adequate measures to establish the source of wealth and source of funds that are involved in a business relationship with PEPs and of all their assets (Art. 27² (2), the AML/CFT Law). This requirement also extends to occasional transactions or professional services with the involvement of PEPs (Art. 27² (3), the AML/CFT Law). Art. 24 (3) (b) of the FIA Instruction (Series: FIs, no. 002, 19.04.2018) further explains that the concept of source of wealth is not limited to funds or other assets involved in a business relationship or occasional transactions, but encompasses the entire body of wealth (i.e. total assets) of customers and beneficial owners identified as PEPs.

(d) *Enhanced on-going monitoring* - FIs must conduct enhanced ongoing monitoring of a business relationship with PEPs (Art. 27² (2), the AML/CFT Law). This requirement is further elaborated in Art. 24 (3) (c) of the FIA Instruction (Series: FIs, no. 002, 19.04.2018) which specifies the minimum set of measures to be taken in those cases.

Criterion 12.2 - The definition of PEPs does not distinguish between domestic and foreign PEPs. The enhanced measures set out under c.12.1 apply to all PEPs irrespective of whether they are domestic or foreign. The definition also includes persons entrusted with a prominent function in an international organization.

Criterion 12.3 - According to Art. 27² (4) of the AML/CFT Law, all PEP-related legal provisions also apply to family members and persons known to be close associates of PEPs. The definition of “family

⁵¹ in compliance with the FATF standards.

members” as provided under Art. 1 of the Technical Annex to the AML/CFT Law includes: a) the spouse, or a person considered to be equivalent to a spouse; b) the children and their spouses, or persons considered to be equivalent to a spouse; c) the parents.

As for “persons known to be close associates of PEPs”, those include (a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a PEP; (b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a PEP.

Criterion 12.4 - FIs are required under Art. 27³ of the AML/CFT Law to take reasonable measures to determine whether beneficiaries of a life or other investment-related insurance and the beneficial owner of the beneficiary are PEPs. These measures shall be taken no later than at the time of the payout of capital or return on capital or at the time of the assignment, in whole or in part, of the policy.

Where there are high ML/TF risks, FIs shall additionally (a) inform senior management before the payout of capital or return on capital; (b) conduct enhanced scrutiny of an entire business relationship with the policy holder and, in particular, of the links between the latter, the beneficiary and/or the respective beneficial owners; (c) consider in any case whether to send a STR to the FIA if the relevant requirements are met.

These measures also apply to family members and persons known to be close associates of PEPs.

Weighting and Conclusion

R.12 is rated C.

Recommendation 13 – Correspondent banking

In the 2011 MER, San Marino was rated LC with the former R.7. The requirements regarding correspondent banking relationships were limited to respondent institutions located in jurisdictions not imposing equivalent AML/CFT obligations.

Criterion 13.1 – The AML/CFT Law defines the cross-border correspondent relationships as correspondent banking and other similar relationships between FIs.

(a) Art. 27⁵ (1) (a) of the AML/CFT Law states that FIs shall gather sufficient information about a foreign respondent FI to understand the nature of its business, and shall determine from publicly available sources its reputation and the quality of supervision, including whether it has been subject to ML/TF investigation or regulatory action.

(b) Art. 27⁵ (1) (b) of the AML/CFT Law obliges FIs to assess the AML/CFT controls carried out by the foreign financial entity.

(c) Art. 27⁵(1) (c) of the AML/CFT Law obliges FIs to obtain approval from senior management before establishing correspondent relationships.

(d) Art. 27⁵(1) (d) of the AML/CFT Law obliges FIs to establish and document the respective responsibilities with regard to prevention and combating of ML/TF.

Criterion 13.2 – Art. 27⁵ (2) of the AML/CFT Law obliges FIs to satisfy themselves that a foreign respondent FI performed CDD on those customers that have direct access to “payable-through accounts”, and that it is able to provide the relevant CDD data upon request to the correspondent bank.

Criterion 13.3 – Pursuant to Art. 28 of the AML/CFT Law, FIs are prohibited from establishing or maintaining a business relationship, including a correspondent relationship, with shell banks. They are required to take measures to ensure that foreign respondent FIs do not allow a business

relationship with shell banks either. The definition of a shell bank provided in the AML/CFT Law is consistent with the FATF Glossary.

Weighting and Conclusion

R.13 is rated C.

Recommendation 14 – Money or value transfer services

In the 2011 MER San Marino was rated PC with the former SR.VI. The deficiencies included the lack of licensing/registration requirements and implementing legislation (the FIA Instructions) for post offices providing MVTS.

Criterion 14.1 – MVTS are “reserved” activities according to Attachment 1 of the LIFS and require license by the Central Bank (CBSM). Due to limited dimensions of San Marino only credit institutions (e.g. banks) and Poste San Marino S.p.A. (DD no. 22 of 26 February 2015 (Art. 3(1)) are licensed to conduct MVTS activities. Banks have to apply for an authorization to provide MVTS separately from their banking license (Art. 3 and 4 of Law 165/2005 and Attachment. I art I and II.II.3 of CBSM Bank Regulation 2007-07).

Criterion 14.2 – Abusive exercise of a reserved activity by physical persons, including MVTS, is criminalised and punishable with imprisonment and a fine (Art. 134 of the LIFS (165/2005)) Any person carrying out a reserved activity without the required authorisation, will be punished by second-degree imprisonment and a fine, as well as by third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality (art. 134(1) of Law 165/2005). Authorised entities that carry on reserved activities of Attachment no. I of Law 165/2005 without having been authorised, are subject to a financial penalty ranging from €1 000 to €30 000. Anyone leading others to false belief of supervision by CBSM, is subjected to a financial penalty ranging from €2 000 to 20 000 (Art. 3 and 4 of DD No. 76, 30 May 2006). When administrative offences have been established, the information is divulged to a criminal judge to decide whether criminal proceedings need to be initiated based on whether objective cogniscence of the offender can be established. Nevertheless, the maximum amount of fine of €30 000 to authorized persons, including banks, for providing services without authorization does not seem proportionate and dissuasive, but combined with criminal proceedings, which also may impact the suitability of persons for managerial positions or ownership in authorized entities, contributes to the dissuasiveness of sanctions.

The CBSM monitors the abusive exercise of a reserved activity upon notification of authorized parties, third parties or anonymously and has the power to issue a report through Supervision Committee to the JA (Art. 104 (1-3) of Law 165/2005). All CBSM employees, as public officials, are requested by the law to report to the Supervision Committee any irregularities, also when there is a suspicion of crime and in case of MVTS carried on illegally, only the Supervision Committee is authorised by the law to report to the Court. Information on potential provision of unauthorized MVTS is provided to CBSM through cooperation with other authorities (FIA, UAC, CLO, Banking Association) and during business registration. Art. 17 of Decree 61/2019 allows CBSM to use whistleblowing information to supervise the system for illegal exercise of reserved activities, incl. MVTS. Art. 104 (1-3) of Law 165/2005 does not impose specific obligation for the San Marino authorities to identify natural or legal persons that engage in MVTS without license or authorisation.

Criterion 14.3 – According to Art. 17 (1)(a) and Art. 18 (1) of the AML/CFT Law, MVTS providers, including Poste San Marino S.p.A., are OEs subject to AML/CFT obligations and are supervised for AML/CFT compliance by the FIA.

Criterion 14.4 – MVTS providers are regulated by the CBSM Regulations 2014-04 (Regulation for payment services and electronic money issuing services). Only in case of cross-border activities as

provision of services without permanent establishment, agents can be a part of the distribution channel. The distribution network in San Marino of a payment service provider (PSP) or institution can be composed only of branches. There are no branches authorized due to the size of San Marino. Use of agents by MVTS providers for cross-border activities is subject to authorisation pursuant to Art. III.VI.8 of CBSM Regulations 2014-04 by CBSM and the foreign supervisory authority. Currently only credit institutions and San Marino Poste is entited to carry out MVTS and there are no agents used for provision of cross-border MVTS in or from San Marino.

Criterion 14.5 – Poste San Marino S.p.A. has no agents for MVTS abroad and operates exclusively via post offices. Other MVTS providers may provide cross-border services without permanent establishment through a distribution network by means of agents. Even though AML/CFT requirements extend to agents as licenced providers or reserved activities, there is no specific requirement for MVTS providers to include agents in their own AML/CFT programmes and to monitor them for compliance with these programmes.

Weighting and Conclusion

The provision of MVTS in San Marino without a licence is prohibited, but there is no specific “proactive” obligation for the San Marino authorities to identify natural or legal persons that engage in MVTS without license or authorisation,. There are also no specific requirements for MVTS providers to include agents their AML/CFT programmes and monitor them for compliance with these programmes. The shortcomings identified pertain to areas less significant due to the size and composition of the market ofSan Marino. **R.14 is rated LC.**

Recommendation 15 – New technologies

In the 2011 MER San Marino was rated LC with the former R.8. It was not specified which supplementary measures would be considered adequate to verify the identity of a customer who was not physically present.

Criterion 15.1 - Art. 16(2) of the AML/CFT Law requires carrying out the national ML/TF risk assessment. In the context of the NRA carried out by San Marino, products and services posing higher ML/TF risks have been analysed. Based on the results of the 2019 NRA, the National Strategy 2020-2022 and the related Action Plan have set a requirement for competent authorities to establish a dedicated working group with the aim to cooperate in this field.

The AML/CFT Law also requires FIs to identify, analyse and assess ML/TF risks that may arise in relation to the development of new products, practices, delivery mechanisms and the use of developing technologies for both new and pre-existing products (Art. 44(2)).

Criterion 15.2 - Art. 44 of the AML/CFT Law provides the obligation of FIs to:

(a) identify, analyse and assess ML/TF risks that may arise in in relation to the development of new products, practices, delivery mechanisms and the use of developing technologies for both new and pre-existing products using or making the products available, this assessment shall be done before using or making available those products;

(b) carry out appropriate measures to manage and mitigate the identified risks. Moreover, Art. 166(1) of the AML/CFT Law provides that FIs shall enforce policies, procedures and controls aimed at effectively managing and mitigating ML/TF risks both identified internally and at the national level. Those policies, procedures and controls shall be proportionate to the nature and size of FIs, and the ML/TF risks identified.

Criterion 15.3 - Regulation on VASPs is provided by 2 legal instruments in San Marino, the 1st relating only to Blockchain entities (BEs) and the 2nd to all VAs and VASPs as provided under the FATF Recommendations. In particular, San Marino has adopted DD no. 86 of 23 May 2019 (DD 86/2019), which introduces regulation, providing for specific rules for the different applications of

Distributed Ledger Technology (i.e. blockchain system). The activities of the BEs covered by the decree fall under the definition of the VASPs as participation in and provision of financial services related to an issuer's offer and /or sale of a VA. In addition, DD no. 21 of 3 February, 2020 ratified by DD 33/2020 has now introduced the notions of VAs and VASPs into the AML/CFT Law adding them into the list of OEs. The definition of VASPs provided under the AML/CFT Law covers all the activities provided under FATF glossary.

(a) As stipulated under Criterion 15.1, the AML/CFT law sets a general requirement for conducting a nation ML/TF risk assessment, which shall be reviewed when, *inter alia*, there are new risks (Art. 16² of the AML/CFT Law). To date no assessment of the VASPs sector has been conducted to identify and assess the ML/TF risks emerging from VA activities and the activities or operations of VASPs (apart from the description of current regulation and cooperation mechanisms provided in the 2019 NRA in which "San Marino Innovation" - the competent authority for authorization, registration, supervision and regulation of entities applying Blockchain technology as defined by the DD of 23 May 2019 (no. 86) was involved).

(b) A meeting was held by the TCNC, based on the outcomes of which a number of risk-based measures were conducted, including publication of a warning to investors concerning potential risks related to virtual currencies⁵², supervision of a company operating in virtual currencies, etc. At the same time, due to the absence of an in-depth assessment of the VASPs sector to identify and assess the ML/TF risks emerging from VA activities and the activities or operations of VASPs, the AT may not confirm application of RBA fully in line with FATF recommendations.

(c) According to the AML/CFT Law the VASPs are defined as OEs and have the obligation to identify, assess and mitigate their risks as provided under Articles 16.5 and 16.6 of the AML/CFT Law.

Criterion 15.4

(a) Based on the AML/CFT Law, the VASPs fall under the category of non-financial services and have to register with the FIA. DD 86/2019 provides the requirements for BEs registration. Registration is conducted by the San Marino Innovation upon completion of the due diligence process.

i) The definition of VASPs as provided under the AML/CFT Law extends to legal persons. As for BEs, those are "companies or other entities having their own legal personality that use Blockchain systems and are resident: (i) in the Republic of San Marino; (ii) in a EU Member State; (iii) in a non-EU country which is not classified as a "high-risk country" and is deemed suitable pursuant to the legislation in force in the Republic of San Marino".

ii) The definition of VASPs extends to natural persons, as provided under the AML/CFT Law, which also have the legal obligation to register with the FIA.

(b) In order to recognise and register a BE, it must submit to a due diligence process carried out by the Institute. The due diligence process has two components: a documentary component and a reputational component. ANNEX A to DD 86/2019 provides that for registration of a BE, San Marino Innovation shall acquire, *inter alia*, the list of partners/associates and any third parties on whose behalf, in whose interest or under whose control the partner acts. Based on Art. 12 of the DD 86/2019, the BEs, which are companies, shall apply the same AML safeguards which are applicable in relation to implementation of R.24. At that, none of the persons acting as shareholders, BOs and senior managers shall be "Unfit Person", as defined in the art. 1 para 1 number 9 of the Company Law. As for the VASPs which are natural persons, the latter have to register with the FIA registry of non-financial parties among other OEs as provided under articles 17 and 19 of the AML/CFT Law.

Criterion 15.5 - With regard to the VASPs covered under the AML/CFT Law, Art. 17 of the Law requires VASPs together with other OEs to register with the FIA registry of non-financial parties,

⁵² <https://www.bcs.m.sm/site/home/sala-stampa/comunicati-stampa-e-notizie/articolo5843.html>

while Art. 65.4 of the same law provides for the sanctions in case of violation of registration requirements. As for the BEs, Art. 4 of the DD no. 86/2019 empowers the San Marino Innovation with the authority to exercise, on an exclusive basis, supervisory, regulatory and sanctioning functions vis-à-vis all interested parties and for the purposes of the DD no.86/2019. At that, the Institute shall detect violations of the sector-specific regulations and directives and formally notify the party concerned, granting a reasonable period of time for compliance, as well as to withdraw the recognition, certifications and authorisations issued in the event of non-compliance. The regulation in place concerns only the cases of non-compliance with the regulations by the already recognized BEs. In addition, based on the NRA Action Plan a working group comprising competent state authorities has been established with the aim of cooperation in the field. The group has conducted a screening exercise of registered businesses to see whether companies were found having a corporate object which could hypothetically be compatible with the activities falling within the definition of “service providers in the field of VAs”. No positive results were found. Nonetheless, the research was limited to companies only, which were also registered ones. No information was presented on any activities related to identification of unregistered entities (both legal and natural). Moreover, apart from the regulations specified above, no specific sanctions are in place in relation to applying sanctions against unregistered/ unlicensed operations of VASPs.

Criterion 15.6

(a) VASPs are introduced in the AML/CFT Law as OEs falling under the category of non-financial entities. At that, the FIA according to Art. 5 of the AML/CFT Law exercises supervisory powers over these OEs. Art. 70-75 of the AML/CFT Law provide for the rules of application of sanctions. Findings of C28.5 apply to the risk-based supervision conducted by the FIA in relation to the VASPs as well. As for BEs, general regulation and supervision of the latter is conducted by the San Marino Innovation (Art. 4 of the DD 86/2019). In addition, Art. 12 of the DD 86/2019, provides that in the AML/CFT framework, the FIA may issue specific binding provisions, in the form of Instructions and/or Circulars, concerning the fulfilment of customer due diligence requirements according to a RBA, data and information recording requirements, suspicious transaction reporting requirements, organisational and control structures and anything else deemed necessary.

(b) Art. 5 of the AML/CFT Law sets the rules for supervision of VASPs by the FIA. At that, the FIA is empowered to conduct risk-based supervision by means of inspections, compel production of information and impose a range of sanctions, as provided under point (a). As regards registration requirements, the San Marino Innovation is empowered to repeal license when dealing with BEs.

Criterion 15.7 - Art. 12 of the DD 86/2019 provides that the FIA may issue specific binding provisions for the BEs (see point (a) of this Criterion). Moreover, Articles 4.1.d of the AML/CFT Law provides for the obligation of the FIA to provide guidelines and feedback to the OEs, including VASPs.

Criterion 15.8 -

(a) A range of administrative and criminal sanctions are stipulated under Art. 70-75 of the AML/CFT Law. The deficiencies identified under R.35 apply, at that the sanctions available may not always be proportionate.

(b) The sanctions referred to above are equally applicable to directors and senior management of VASPs, as provided under Art. 70 of the AML/CFT Law (For detailed information please refer to the analysis of R.35 (2)).

Criterion 15.9

(a) and (b) CDD requirements apply to BEs based on Art. 12 of the DD 86/2019, provided that they issue “Investment Tokens” for a total amount equal to or exceeding €1 000 or an equivalent value if issued in a foreign currency. In addition, VASPs are considered OEs under AML/CFT Law, thus the obligations in relation to R.10 and R.16 equally apply to VASPs.

Criterion 15.10 - The communication mechanisms, communication obligations and supervision referred to TFS apply also to VASPs being OEs based on AML/CFT Law and BEs by virtue of Art. 12 of the DD 86/2019. Deficiencies in relation to implementation of R.6 and R.7 apply.

Criterion 15.11 - International cooperation in relation to ML/TF and predicate offences related to VAs is conducted by the FIA, as well as by the LEAs (please refer to R.37-40).

Weighting and Conclusion

San Marino has provided the notion of VAs and VASPs in the national AML legislation, the latter being OEs. Nonetheless, there are a number of shortcomings identified, including an absence of an in-depth assessment of the VASPs sector and consequent application of risk-based measures; insufficient action to identify natural persons carrying out unregistered VASP activity and absence of sanctions in this regard; non-proportionate sanctions for failures to comply with AML/CFT requirements. **R.15 is rated PC.**

Recommendation 16 – Wire transfers

In 2011 MER San Marino was rated C with former SR.VII.

Ordering FIs

Criterion 16.1 - According to Art. 21 (1) (c) of the AML/CFT Law, OEs shall apply customer due diligence measures when they perform occasional transactions representing a transfer of funds equal to or higher than €1 000.

(a) Based on Art. 3 (1) of the FIA Instruction (no. 008 of 8 May, 2020), FIs should ensure that transfers of funds are accompanied by the following information on the payer: (i) the name of the originator; (ii) the originator's payment account number or, where transfers are not carried out from or to a payment account, unique transaction identifier; (iii) the originator's address, official personal document number, customer identification number or date and place of birth.

(b) As for the beneficiary, the following shall always accompany the transfers of funds: (i) the name of the beneficiary; (ii) the payment account number of the beneficiary or, if the transfers are not carried out from or to a payment account, a unique transaction identifier.(Art. 3 (2)).

Verification of information is provided under Art. 7 of the Instruction n. 008 of 8 May 2020, based on which before transferring funds, the payment service provider of the originator shall verify the accuracy of the information on the basis of identity documents or, if not possible, of documents, data or information obtained from a reliable and independent source.

Criterion 16.2 - Art. 5 of the FIA instruction (no. 008 of 8 May, 2020) sets the requirements for batch file transfers not using RIS.

In particular, when payment service providers of the originator do not use RIS, information referred to under Criterion 16.1 shall appear in the batch file and be verified in accordance with Art. 7 of FIA Instruction.

Criterion 16.3 - Under Art. 4 of FIA Instruction n. 008 of 8 May 2020, transfers of funds by payment service providers of the originator that do not use RIS (i.e. "cross border wire transfers") shall be accompanied by the information referred to in Art. 3 irrespective of the amount. As for the domestic transfers, those not exceeding €1 000, provided that they are not linked to other transfers of funds which cumulatively equal to or exceed €1 000, shall at least include: (i) the names of the originator and of the beneficiary; (ii) the payment account numbers of the originator and of the beneficiary or, in the absence of a payment account, the unique transaction identifier.

Criterion 16.4 - With regard to transfers of funds below €1 000 - provided that they are not linked to other transfers of funds that cumulatively are equal to or exceed €1 000 - the payment service provider shall not be obliged to verify the accuracy of the information on the originator unless: (i)

has received the funds to be transferred in cash or in anonymous electronic money; or (ii) is suspected of ML/TF, without prejudice to the reporting requirements referred to in Art. 36 of the AML/CFT Law.

Criteria 16.5 & 16.6 - Under Art. 6 of the FIA Instruction (no. 008 of 08 May, 2020) domestic wire transfers may be carried out on the basis of the account number of the originator and the beneficiary or the unique transaction identifier. Upon request of the PSP of the beneficiary, the PSP of the originator should make the full information on the originator and the beneficiary available within 3 working days. Art. 5 of the AML/CFT Law also empowers the FIA to obtain all necessary information from FIs in a timely manner. The requirement for the account number or unique identifier used to permit traceability of the originator or beneficiary of the transaction is provided under Articles 3 and 6 of the FIA Instruction no. 008 of 08 May, 2020.

Criterion 16.7 - Art. 18 of the FIA Instruction (no. 008 of 08 May, 2020) provides that the information on the payer and the payee obtained by the PSPs of the originator and the beneficiary and by the intermediary PSPs shall be subject to the record-keeping requirements envisaged by the AML/CFT Law.

Criterion 16.8 - Art. 19 of the FIA Instruction (no. 008 of 08 May, 2020) specifically prohibits PSPs from transferring funds in violation of the relevant information requirements.

Intermediary FIs

Criterion 16.9 - The intermediary PSPs are required to ensure that the originator and beneficiary information accompanying the transfer of funds is retained with it under Art. 14 of the FIA Instruction (no. 008 of 08 May, 2020). In addition, Art. 15 of the Instruction sets a requirement for the OEs acting as intermediaries, to have in place procedures enabling them to detect missing originator and beneficiary information.

Criterion 16.10 - Where technical limitations prevent the required information on the originator or the beneficiary that accompanies a transfer of funds from being transmitted with the corresponding transfer of funds, all information received from the ordering PSP or from another intermediary PSP shall be kept by the intermediary PSP at least 5 years under Art. 16 (5) of the FIA Instruction (no. 008 of 08 May, 2020).

Criterion 16.11 - Based on Art. 15 of the FIA Instruction (no. 008 of 08 May, 2020) intermediary PSPs are required to adopt and implement effective procedures, including, where appropriate, *ex-post* monitoring or real-time monitoring, to identify transfers that lack required originator information or required beneficiary information.

Criterion 16.12 - Art. 16(1) requires intermediary PSPs to adopt and implement effective risk-based procedures and policies to determine (i) when to execute, reject or suspend a transfer of funds lacking required originator information or required beneficiary information; (ii) the follow-up action to be taken. If the intermediary PSP was not provided with the relevant information on the payer or the payee, it shall reject the transfer or ask for the missing information before or after the transmission of the wire transfer, on a risk-sensitive basis.

Beneficiary FIs

Criterion 16.13 - Under Art 8 of the FIA Instruction (no. 008 of 08 May, 2020), PSPs of the payee are required adopt and implement: (i) effective procedures to ensure - in relation to information on the originator and the beneficiary - that the fields of the messaging system or of the payment and settlement system used to carry out the transfer of funds have been completed in accordance with the characters or inputs admissible in accordance with the conventions of that system; (ii) effective procedures, including - where appropriate - *ex post* monitoring or real-time monitoring, to establish whether the following information on the originator and the beneficiary is missing.

Criterion 16.14 - As set out under Art. 12 of the FIA Instruction (no. 008 of 08 May, 2020), in case of transfers of funds equal to or higher than €1 000, whether carried out in a single operation or in several operations which appear linked, before crediting the beneficiary's payment account or making the funds available to the beneficiary, the PSP of the beneficiary shall verify the accuracy of the information on the beneficiary. This verification shall be carried out on the basis of identity documents or other reliable and independent source. The information on the beneficiary must also be verified for transfers not exceeding €1 000 when (i) the payout of funds is made in cash or in anonymous electronic money or (ii) reasonable grounds exist for suspecting ML or TF. Record-keeping requirements are provided under Art. 18 of the FIA Instruction (no. 008 of 08 May, 2020), which requires FIs to maintain information on originator and beneficiary in respect of wire transfers in accordance with the provisions of AML/CFT Law.

Criterion 16.15 - Art. 11 of the FIA Instruction (no. 008 of 08 May, 2020) requires PSPs of the beneficiary to have risk-based policies and procedures for determining (a) when to execute, reject, or suspend a wire transfer lacking required originator information or required beneficiary information; (b) the appropriate follow-up action. If the PSP of the beneficiary was not provided with the relevant information on the originator or the beneficiary, it shall reject the transfer or ask for the missing information before crediting the beneficiary's payment account or making the funds available to the beneficiary, on a risk-sensitive basis.

MVTS operators

Criterion 16.16 - According to Art. 18 of the AML/CFT Law, Poste San Marino S.p.a. (as provided under R.14 no agents for MVTSs in San Marino and abroad, this service is provided directly and exclusively at the Post Offices located only in San Marino) is defined as financial obliged entity that is subjected to AML/CFT obligations and is supervised for AML/CFT compliance by the FIA.

Criterion 16.17 - The situation where one MVTS provider controls both the payer's and the payee's side of a wire transfer is not specifically addressed by the legislation of San Marino. However, MVTS providers are OEs under the AML/CFT Law and must take into account all available information to identify suspicious transactions and file those to FIA. In addition, obligations provided under the FIA Instruction no. 008 of 08 May, 2020 apply.

Criterion 16.18 - According to Art. 20 of the FIA Instruction (no. 008 of 08 May, 2020), when carrying out transfers of funds, PSPs shall comply with the obligations related to restrictive measures under Law 57/2019. In particular, FIs have the obligation to take freezing action and refuse transactions with designated entities, as per obligations set out in the relevant UNSCRs on the prevention and suppression of terrorism and TF, such as UNSCRs 1267 and 1373, and their successor resolutions in relation to all transactions, including wire transfers.

Weighting and Conclusion

R.16 is rated C.

Recommendation 17 – Reliance on third parties

In the 2011 MER San Marino was rated LC with the former R.9. The deficiencies were related to the lack of requirement for FIs to satisfy themselves that (i) copies of identification data and other documentation would be made available from the third party without delay, and that (ii) the third party had measures in place to comply with CDD requirements.

Criterion 17.1 - San Marino's legal framework allows FIs to rely on third parties in order to perform CDD measures (identifying and verifying customers and beneficial owners, and understanding the purpose and intended nature of a business relationship) provided that the ultimate responsibility for those measures remains with the relying FI (Art. 29 of the AML/CFT law).

(a) Art. 29 (2²) of the AML/CFT Law requires FIs to immediately obtain from the third parties the CDD information. The FIA Instruction (Series: FIs, no. 003, 19.04.2018) requires FIs to obtain attestation that a third party duly performed CDD measures and will immediately upon request provide the requested CDD information (Art. 4).

(b) Art. 29 (2²) of the AML/CFT Law requires FIs to take adequate steps to ensure that third parties provide immediately upon request the relevant information and documents related to the identification and verification of customers and their beneficial owners. This requirement is extended to copies of documentation concerning the purpose and intended nature of a business relationship through Art. 5 (1) of the FIA Instruction (Series: FIs, no. 003, 19.04.2018).

(c) Art. 29 (2) of the AML/CFT Law stipulates that OEs can be third parties, while foreign FIs can only be relied upon if they are subject to CDD and record-keeping requirements consistent with those provided by the domestic or EU legislation, and are being supervised for compliance with those requirements. In addition, Art. 8 (1) of the FIA Instruction (Series: FIs, no. 003, 19.04.2018) requires FIs to *inter alia* take into account MERs published by the FATF and FATF-style regional bodies to ensure that the relevant conditions are met in relation to foreign FIs.

Additionally, according to Art. 29² (2) of the AML/CFT Law, FIs must assess whether evidence gathered, and verifications carried out by third parties are appropriate and sufficient to fulfil the relevant CDD obligations and to verify, within the limits of professional diligence, the veracity of documents received. In case of doubts about the identity of the customer and the beneficial owner, FIs shall directly conduct CDD measures. Art. 8 (1) of the FIA Instruction (Series: FIs, no. 003, 19.04.2018) further stipulates that if the information and documents provided by the third party do not enable the understanding of the purpose and intended nature of a business relationship, the relying FI must obtain this information directly from the customer.

Criterion 17.2 - Art. 29² (3) of the AML/CFT Law stipulates that FIs shall be prohibited from relying on third parties established in high-risk countries i.e. jurisdictions with strategic deficiencies in AML/CFT systems. These jurisdictions are identified based on the NRA, FATF statements, MERs and decisions of the European Commission (Art. 16). While the Law prohibits reliance on third parties from non-reputable jurisdictions, it is not equivalent to the obligation to have regard to information on the level of country risk.

Criterion 17.3 - Art. 9 of the FIA Instruction (Series: FIs, no. 003, 19.04.2018) stipulates that FIs can rely on CDD data, information and documents gathered at the group level if the group is exclusively composed of domestic FIs or, where a foreign FI is part of the group, if the following conditions are met:

(a) CDD and record-keeping requirements, and AML/CFT policies and procedures are applied at the group level in accordance with the domestic and EU legislation

(b) the application of CDD and record-keeping requirements, and risk-mitigation policies and procedures is supervised at the group level by a supervisory authority

(c) there are policies and procedures at the group level for the effective mitigation of risks, including those related to geographic factors.

Weighting and Conclusion

The lack of obligation to have regard to information on the level of country risk as have a negative impact on the overall level of compliance. **R.17 is rated LC.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In the 2011 MER San Marino was rated PC with former R.15 and LC with former R. 22. The deficiencies were related *inter alia* to the requirement on internal procedures, policies and controls, and the lack of requirement to designate compliance officers at the management level and to have an adequately resourced and independent audit function. There was also no requirement to pay particular attention to AML/CFT measures with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, and to apply a higher AML/CFT standard where requirements of home and host countries differed.

Criterion 18.1 – Pursuant to Art. 44 (1) of the AML/CFT Law, FIs are obliged to adopt internal policies, procedures and controls to fulfil the requirements of this law and the instructions and circulars issued by the FIA. FIs must take into account the results of internal ML/TF risk assessments and risk mitigating measures in implementing those policies, procedures and controls. Risk mitigating measures shall be proportionate to the nature and size of the business activities of OEs pursuant to Art 16 *sexies* (1) of the AML/CFT Law.

(a) The FIA Instruction (Series: FIs, No. 005, 11.02.2019) provides detailed provisions on AML/CFT compliance arrangements in FIs, including the rights and responsibilities assigned to different bodies, functions and officers. Thus, FIs are obliged to establish an AML Committee and appoint an AML/CFT Officer. Art. 42 (6) of the AML/CFT Law stipulates that the AML/CFT officer must be given appropriate powers to carry out functions independently, including the power to access information and documents without authorization. The AML/CFT officer must also be directly reporting to the FI's governing body. However, the compliance officer does not have to be appointed at the management level.

(b) Art. 44³ of the AML/CFT Law requires FIs to apply rigorous screening procedures when hiring employees. FIs must take into account the role, functions and tasks of those being hired. Art. 3 (n) of the FIA Instruction (005/2019) further stipulates that the FI's governing body must adopt staff selection procedures that ensure high professional and ethical standards.

(c) An ongoing employee training programme is required under Art. 44² of the AML/CFT Law. Art. 51 of the FIA Instruction (005/2019) further elaborates that the training program must be targeted depending on the tasks performed by employees, must include both internal and external courses, and must cover relevant topics, including CDD requirements, RBA and ML/TF trends, schemes and indicators.

(d) Art. 12 of the FIA Instruction (005/2019) requires an internal audit function with reporting obligations to the governing body of FIs to supervise the overall functionality of the AML/CFT controls and more specifically to examine the application of CDD and record-keeping requirements, and the effectiveness of the ongoing training program.

Criterion 18.2 - Pursuant to Art. 45 (1) of the AML/CFT Law, financial groups are required to implement group-wide policies and procedures. However, there is no explicit requirement to include measures set out in c.18.1.

(a) Art. 45 (6) of the AML/CFT Law specifically requires adoption of group-wide policies and procedures for information sharing on CDD requirements and AML/CFT risk management for financial entities that are part of a group with branches and majority-owned subsidiaries located abroad. This obligation does not include all majority-owned subsidiaries of the financial group. Nevertheless, local majority-owned subsidiaries would be included in the group-wide policies and procedures.

(b) Art. 45 (6) of the AML/CFT Law stipulates that group-wide policies and procedures for information sharing should ensure that branches and majority-owned subsidiaries located abroad

provide information on business relationships, transactions and customers that is necessary for AML/CFT purposes. The tipping-off prohibition provided by Art. 40² of the AML/CFT Law provides an exemption for sharing STR-related information between FIs and their branches and majority-owned subsidiaries located abroad. Furthermore, Art. 14 (4) and (5) of the FIA Instruction (005/2019) require financial groups to put in place formalised procedures of coordination between its members and the parent company in relation to CDD measures and STR requirements. The parent company is also required to create a common database that allows all group members to evaluate customers in a uniform manner. This obligation does not include all majority-owned subsidiaries of the financial group. Nevertheless, local majority-owned subsidiaries would be included in the group-wide policies and procedures.

(c) As noted above, STR-related information can be shared between FIs and their branches and majority-owned subsidiaries located abroad. Art. 40² (2) of the AML/CFT Law stipulates that this can only be done in strict compliance with group-wide policies and procedures, which are applicable to all majority-owned subsidiaries, on information sharing and the legal prohibition of tipping-off. There are no explicit safeguards on the confidentiality and the use of information exchanged, however the group-wide policies and procedures include procedures for sharing information within the group and all the indications regarding the protection of the confidentiality of the reporting person implicitly refer to the confidentiality of the information exchanged regarding STR.

Criterion 18.3 – Art. 45 (3) and (4) of the AML/CFT Law provides that foreign branches and majority-owned subsidiaries of FIs apply AML/CFT measures required by the legislation of San Marino, to the extent allowed, when operating in a country with less strict requirements. If the legislation of the host country does not allow this, FIs must ensure that foreign branches and majority-owned subsidiaries apply additional measures for ML/TF risk management and inform the FIA thereof. The FIA has the authority to take the relevant supervisory or restrictive actions if it considers that the additional measures are not sufficient.

Weighting and Conclusion

A deficient in relation to c 18(1) exists as there is there is no explicit requirement to appoint a compliance officer at the management level. For c.18(2) financial groups are required to implement group-wide policies and procedures but there is no explicit requirement to include measures set out in c.18.1. Moreover, c18(2)(a) and (b) do not extent to entities of financial group if they are located abroad. **R.18 is rated LC.**

Recommendation 19 – Higher-risk countries

In the 2011 MER, San Marino was rated LC with former R.21. There was a lack of appropriate countermeasures in relation to countries that continued not to apply or insufficiently apply the FATF Recommendations.

Criterion 19.1 - Art. 27 (1) (d) of the AML/CFT Law requires FIs to apply enhanced CDD measures to manage and mitigate ML/TF risks in relation to entities located or residing in high-risk countries mentioned in Art. 16 *undecies* of the AML/CFT Law, which includes those called for by the FATF (Art. 16 *undecies* (2) (c)). Art. 34 and Art. 35 of the FIA Instruction (Series: FIs, no. 002, 17. 04.2018) specify that enhanced CDD measures must be applied when customers, or other natural or legal persons or FIs involved in a transaction, are residing, domiciled or headquartered in a high-risk country. Moreover, Art. 34 (2) of the FIA Instruction clarifies that enhanced CDD measures must be *proportionate* to the actual risks identified with regard to business relationships or occasional transactions.

Criterion 19.2 - Art. 37 of the FIA Instruction (Series: FIs, no. 002, 17. 04.2018) authorizes the FIA to issue an ad-hoc circular and require FIs to apply countermeasures in relation to “countries subject to countermeasures”, which are broadly in line with those provided in the Interpretive Note to R.19.

FIA has not issued any ad-hoc circulars so far. According to the FIA Instruction Nr. 001 of 19/04/2018 it is able to require countermeasures independently of any call by the FATF.

Criterion 19.3 - As noted above, the list of high-risk countries including those identified by the FATF as having strategic deficiencies in AML/CFT systems is approved by the Congress of State. The FIA also publishes this list on its website.

Weighting and Conclusion

R.19 is rated C.

Recommendation 20 – Reporting of suspicious transaction

In its 2011 MER San Marino was rated LC with the former R.13 and SR.IV due to the effectiveness issues: “defensive” reporting patterns seemed to prevail in the banking sector; low level or no reporting by other FIs raised questions on the quality of reporting and the effective implementation of the reporting requirement; and the implementation of the TF reporting requirement was not demonstrated.

Criterion 20.1 - According to Art. 36(1) of AML/CFT Law, FIs are required promptly to file with the FIU reports on assets and transactions suspected of involving proceeds of illegal activity or relating to terrorist financing irrespective of the amount.

In cases of extreme urgency, the STR may be anticipated orally. It can occur as an exception when the FI has already developed suspicion, but a transfer of funds is imminent, and the time required to complete the STR through the electronic channel is not compatible with such urgency (art.9(3) FIA Instruction no. 006 of 10/05/2019).

If a report, is made orally, FI is still required to transmit without delay (within 48 hours after the declaration made) to FIA the report in digital format, providing all the data and information necessary to perform the financial analysis (FIA Instruction, Series: FIs, no. 006 of 10.05.2019 and articles 9 and 36 (4) of the AML/CFT Law).

The oral report must be made in person to member of the FIA staff who, as a public official, identifies the reporting person by means of an identification document and notes briefly the most important facts. In this case, the member of the FIA staff issues a copy of the document in which the most important facts have been briefly noted to the person making the oral report. This document must be promptly deposited and maintained at the head office of the obliged party and must be guaranteed the same level of confidentiality as any STR sent electronically. If a subsequent electronic STR is not sent to the FIA, there is a violation of the requirements set in the Art. 36, para 4, of the AML/CFT Law and Art. 9 of the FIA Instruction.

Authorities explained that oral reporting was introduced in 2008 in order to allow all members of the public to be able to approach FIU and submit and oral report in case of a suspicion (Art. 37 AML/CFT Law). Oral reporting has been used only once since 2008.

Criterion 20.2 - The reporting requirement described above applies to attempted or proposed transactions, including professional activities requested but not carried out (Art. 36 (4²), the AML/CFT Law). The AML/CFT Law also specifically requires reporting of suspicious transactions regardless of the amount of funds (Art. 36 (1)).

Weighting and Conclusion

R.20 is rated C.

Recommendation 21 – Tipping-off and confidentiality

In 2011 MER San Marino was rated C with former R.14.

Criterion 21.1 - The reporting of suspicious transactions in good faith shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not result in liability of any kind for FIs, their employees or directors under Art. 39 of the AML/CFT Law. Moreover, the AML/CFT Law does not stipulate the precise knowledge of the underlying criminal offence or the actual occurrence of illegal activity as a precondition for reporting suspicions.

Criterion 21.2 - FIs, their directors and employees are prohibited from disclosing to the customer or to other third parties that a STR has been or will be submitted or that an analysis or investigation related to ML, TF or a predicate offence is being, or may be, carried out under Art 40² (1) of the AML/CFT Law. This prohibition does not apply in a number of situations such as the disclosure of information within the financial group, or between FIs concerning the same customer and the same transaction (Art. 36), which is consistent with the FATF standards.

Weighting and Conclusion

R.21 is rated C.

Recommendation 22 – DNFBPs: Customer due diligence

San Marino was rated PC with the former R.12 in its 2011 MER. The deficiencies identified in relation to FIs concerning the former R.5-R.11 were also applicable to DNFBPs.

Criterion 22.1 - The CDD requirements apply to DNFBPs in the same way that they apply to FIs, except as explained below. The requirements provided by the AML/CFT law are supplemented with those stipulated in the FIA Instruction no. 001 of 18/09/2019 addressed to accountants and auditors, FIA Instruction n. 001 of 21/03/2019 addressed to lawyers and notaries, and the FIA Instruction (no. 2009-09) addressed to “non-financial entities”.

(a) Casinos (including online casinos) are prohibited in San Marino. According to Art. 21 (2) of the AML/CFT Law, the providers of games of chance and gaming houses must undertake CDD measures in case of purchase or exchange of chips or other gaming instruments or upon the collection of winnings by customers for an amount equal to or exceeding €2 000, whether carried out in a single operation or in several operations which appear linked. Moreover, Art. 21 (5) provides that regardless of the amount of chips or other gaming instruments purchased, sold or exchanged, the providers of games of chance and gaming houses shall identify and verify customers upon the entry into the premises and shall adopt appropriate procedures to link that identification data to the transactions carried out by the customer.

(b) REAs are subject to the general CDD requirements. They are not specifically required to apply CDD measures to both purchasers and vendors of the property. However, in practice natural or legal persons (either vendors or purchasers) to whom REAs provide professional services qualify as customers and thus, must be subjected to CDD measures under the AML/CFT Law (Art. 1 (f)).

(c) DPMS are subject to the general CDD requirements. Thus, they must apply CDD measures when engaging in occasional transactions equal to or above €15 000 (and irrespective of whether those transactions are carried out in cash or not).

(d) Lawyers, notaries, auditors and accountants are defined as professionals and are required to carry out CDD measures when they prepare for, or carry out, transactions for their clients concerning the activities listed in c.22.1(d) under the AML/CFT Law (Art. 20 (1)).

(e) TCSPs are subject to the general CDD requirements when they provide services related to the activities specified in c.22.1(e). except when acting (or arranging for another person to act) as a nominee shareholder for another person. However, nominee shareholding arrangement falls under a “fiduciary” contract. As such shareholding under fiduciary contracts is a fiduciary activity which is a “reserved activity” under the LISF and defined as: “Fiduciary activity means the registration of

third party's assets in execution of a mandate without representation" (Annex 1, letter c of the LISF). Thus, the Fiduciary companies, when carrying out fiduciary activities, perform CDD requirements.

Criterion 22.2 - The record keeping requirements are equally applicable to both DNFBPs and FIs (see R.11).

Criterion 22.3 - The requirements concerning PEPs are equally applicable to both DNFBPs and FIs (see R.12).

Criterion 22.4 - The requirements regarding the new technologies are equally applicable to both DNFBPs and FIs (see R.15).

Criterion 22.5 - The requirements regarding the third-party reliance are equally applicable to both DNFBPs and FIs (see R.17).

Weighting and Conclusion

The deficiencies identified in relation to FIs under R.17 are also relevant for DNFBPs. **R.22 is rated LC.**

Recommendation 23 – DNFBPs: Other measures

In the 2011 MER San Marino was rated PC with the former R.16. The deficiencies identified in relation to FIs concerning the former R.13, R.15 and R.21 were also applicable to DNFBPs.

Criterion 23.1 - DNFBPs are required to report suspicious transactions based on the same provisions of the AML/CFT Law as do FIs except as highlighted below (see R.20).

(a) Lawyers, notaries, auditors and accountants are considered as OEs when they provide services related to transactions described in c.22.1(d) and thus, are also required to report suspicious transactions. Art. 38 of the AML/CFT Law exempts these professionals from the obligation to file a STR in circumstances where the legal professional privilege applies. In particular, the privilege covers the situations where the relevant information was obtained while defending or representing a client in judicial proceedings or in relation to judicial proceedings, including while giving legal advice on the possibility of commencing or avoiding those proceedings. Matters that fall under the legal professional privilege correspond to the FATF standards.

(b) DPMS are required to conduct CDD measures and to also report suspicious transactions when engaging in occasional transactions equal to or above €15 000 (and irrespective of whether those transactions are carried out in cash or not).

(c) The AML/CFT requirements, including the reporting obligations apply to TCSPs when they provide services related to the activities listed in c. 22.1(e) except when acting as (or arranging for another person to act) as a nominee shareholder for another person.

Criterion 23.2 - The requirements concerning internal controls and foreign branches and subsidiaries are equally applicable to both DNFBPs and FIs (see R.18).

Criterion 23.3 - The requirements concerning high risk countries are equally applicable to both DNFBPs and FIs (see R.19).

Criterion 23.4 - The requirements concerning tipping-off and confidentiality are equally applicable to both DNFBPs and FIs (see R.21).

Weighting and Conclusion

The deficiencies identified in relation to FIs under R.18, R.19 and R.20 are also relevant for DNFBPs. **R.23 is rated LC.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

In the 2011 MER San Marino was rated LC with the former R.33. The effectiveness of the newly adopted legislation could not be demonstrated due to the transactional period, which would have prevented the authorities from having access to updated information concerning legal persons in all cases.

Criterion 24.1 - The types of legal persons that can be established in San Marino include companies (limited liability companies, SPAs), unlimited partnerships, cooperatives, consortia, associations and foundations.

The different types, forms and basic features of legal persons, as well as the processes of their creation and of obtaining and recording basic information are set out in respective laws such as the Company Law (no. 47 of 23 February 2006), the Law on Cooperation and Cooperatives (no. 149/1991), the Law on Consortia (no. 42/1977), the Law on Associations and Volunteering (no. 75 of 16 June 2016) and the Law on Foundations (no. 101 of 1 July 2015). Information on the processes for the creation of legal persons can also be found online (<https://www.agency.sm/en/corporate-law>) on the website of the Economic Development Agency - Chamber of Commerce. The processes for obtaining and recording the beneficial ownership information are described by the AML/CFT Law (Art. 23⁴).

Basic information of companies, such as the memorandum of association, subscribed and paid up capital and information on the legal representatives is obtained by the Register of Companies through the registration process due to the mandatory registration requirement for all Sammarinese companies governed by Law No. 47 of 23 February 2006 (“Company Law”). The Register of Companies is a public register in the form of an electronic database (Art. 6 Company Law). In addition, information on shareholders and shares is to be kept by the company itself in its shareholder register (Art. 72 para. 4 Company Law). The shareholder register may also be deposited with a lawyer, a notary or accountant (Art. 72 para. 5 Company Law).

Basic information of foundations, such as details of the memorandum of association, name, registered office and personal details of legal representatives is obtained from the Register of Foundations, which is a public register in the form of an electronic database as well and it’s held at the “*Cancelleria Commerciale*”.

Basic information of associations, such as the articles and memorandum of association, signature of the president or legal representative and the name of the association is obtained from the Register of Associations, which is an electronic database held at the “*Cancelleria Commerciale*”.

Basic information of cooperatives, such as the memorandum of association and the articles of association is obtained from the Register of Cooperatives, which is held in the form of an electronic database at the “*Cancelleria Commerciale*” (Art. 69 of the Law on Cooperations and Consortia).

Basic information of consortia, such as the memorandum of association is obtained from the Register of Consortia, which is held in the form of an electronic database at the “*Cancelleria Commerciale*” (Art. 69 of the Law on Cooperations and Consortia).

The Register of Companies is held by the OEA and contains information on legal persons in relation to the Company Law. The so called “Commercial Registers” or “Court Registers” are held by “*Cancelleria Commerciale*” at the Court and contain similar information to the one held by Register of Companies in respect of foundations, associations, cooperatives and consortia and catholic entities. In practice, by accessing the Register of Companies at OEA, the registers of other legal persons (foundations, associations, cooperatives and consortia and catholic entities) are accessible as well. From an IT perspective, there is a unique Register holding information on legal person.

Beneficial ownership information of companies, associations, foundations and similar entities with legal personality is reported to the Office for Control Activities and kept in a register with restricted

access (Art. 23 quarter para. 1 AML/CFT Law). The information to be reported is: name, surname, date and place of birth, nationality and residence address of each beneficial owner, as well as Social Security number or any other unique code provided by jurisdictions other than San Marino, copy of a valid identity document, the starting date of the beneficial ownership, indication of the reasons for which the reported entities acquire the capacity as beneficial owner (ie their beneficial interest).

Information on the processes for the creation of companies (Unltd. Partnerships, LLC, JSC), the authorisation and conditions for setting up companies is provided by the Economic Development Agency - Chamber of Commerce and is publically available under <https://www.agency.sm/en/corporate-law>. The text of the Company Law is also accessible through a further hyperlink to on this website. The texts of the other relevant laws (regulating foundations, cooperatives, consortia, associations) are not available on this website.

The website of the public administration of San Marino and the related restricted website contain publicly available information (in Italian only) on the definition of beneficial ownership of all legal persons and the process for recording beneficial ownership information of all legal persons: <https://www.pa.sm/on-line/home/aree-tematiche/area-operatori-economici.html> and <https://www.pa.sm/on-line/home/aree-tematiche/documento43099747.html>.

Criterion 24.2 - San Marino conducted the NRA in 2015–2016, which refers to the abuse of legal persons in two instances. In Chapter 4.2 titled “*Main ML threat facing the OFI sector (FFC)*”, a criminal case is described where “*the legal person served as an instrument to perpetrate or conceal (with awareness) criminal activities, in particular laundering of illicit proceeds*” and a general statement is made that “*the OFIs sector has been (mis)used through various ways and means*”. Chapter 2.4 presents a TF-related case where an operational STR analysis conducted by the FIA identified “*a Sammarinese legal person*”, which “*sen(t)/receive(d) funds to/from high risk countries or jurisdictions supporting terrorism and its financing.*” This however significantly falls short of the requirement to assess ML/TF risks associated with all types of legal persons created in the country. In addition, San Marino presented risk related information when submitting her effectiveness response for IO.5. This information represents a summary of the ML/TF risks related to legal persons. However, this still falls short of a fully-fledged ML/TF risk analysis of legal persons, which should present the threats and vulnerabilities of each type of legal person in a systematic manner based on quantitative and qualitative data eventually leading to a conclusion of the final risk (residual risk after having applied existing risk mitigating measures) and subsequently proposing additional risk mitigating measures to be applied in the future in order to decrease the risk to an acceptable level. There are also no risk categories assigned to all types of legal persons. There is no assessment of fiduciary companies and no analysis of the different risk levels of fiduciary companies ante LISF and fiduciary companies post LISF.

Basic Information

Criterion 24.3 - According to Art. 21 of the Company Law, companies and unlimited partnerships acquire legal personality once registered in the Company Register. The information obtained by the Register covers all the requirements of c.24.3 and is publicly available (Art. 6 & Art. 19). In particular, the name, proof of incorporation, legal form and status derive from the memorandum of association. The basic regulating powers derive from the legal provisions applicable to a company or partnership in question and also from the memorandum of association. Recording the address of the registered office and the list of directors is explicitly required by Art. 6(1).

Cooperatives must be registered by the Public Register of Cooperatives held by the Court Registry (Art. 2 & Art 5, the Law on Cooperation and Cooperatives). The memorandum of association and articles of association of a cooperative, which are first authenticated by a notary and then submitted to the Register include all the data required by c.24.3 (Art. 2). The information is publicly available.

Consortia must be registered with the Court Registry upon application within 60 days of drawing up the memorandum of association (Art. 2 Law on Consortia). Consortia are established by public deed

of a notary, which includes the articles of association. The memorandum of association includes all the data required by c.24.3 (Art. 2, Art. 7 Law on Consortia). The memorandum of association is deposited with the Court Registry. The information is publicly available.

All foundations are registered with the Register of Foundations, which is a public register and is kept at the Court Registry (Art. 7, the Law on Foundations). Among other data, the following has to be recorded: details of the memorandum of association; name, which must be followed by the acronym ONLUS in case of those foundations that pursue public benefit non-profit activities; registered office; personal details of legal representatives and members of governing bodies. The basic regulating powers derive from the legal provisions applicable to foundations and also from the memorandum of association. The information is publicly available.

All associations must be registered by the Register of Associations. The data recorded includes a memorandum and articles of association filed with the Court to obtain legal recognition and a copy of such recognition (Art. 37 of Law 129/2010 by cross-reference to Art. 4 of law 68/1990) and the name of the association (Art. 6 Law on Associations, Art. 4 para. 6 of Law 68/1990). The information is publicly available.

Criterion 24.4 - The shareholder data and the number of shares owned by each shareholder is kept by the company through its shareholder register (Art. 72, the Company Law). Namely, the shareholder register contains the number of units or shares, identification data of persons holding those units or shares, and transfers made therein (Art. 72 (4)). The law distinguishes between the category of registered nominative shares in bare ownership (i.e. "*nuda proprietà*") and in usufruct (i.e. "*usufrutto*"), both of which are entered in the Register of Companies and in the Shareholders' Register. The law does not distinguish between voting rights, however the articles of association may establish different voting rights for special classes of share. In such case the shareholder registers indicate the nature of voting rights. The shareholder register shall be kept in the registered office of a company for its entire existence, but may also be deposited to a lawyer, a notary or accountant in San Marino (Art. 72 (5)), but there is no obligation to notify the Register of Companies of the location of this deposit.

Cooperatives are required to maintain the members' register under Art. 52 of the Law on Cooperation and Cooperatives. The register includes the identification data of all members and the number of units held by each. There are no different categories of units in relation to cooperatives.

Consortia are established by public deed. This deed contains an initial list of members with the shares respectively paid and is maintained with the consortia and held at the Court Registry (Art. 2 Law on Consortia). There are no different categories of units in relation to consortia.

Foundations do not have members, but the identification data of their founders and contributions made by each must be recorded in the memorandum of association, which is kept in the Register of Foundations (Art. 15, the Law on Foundations).

All members of an association and their rights and responsibilities are recorded in the memorandum of association, which is maintained by the Register of Associations (Art. 6, the Law of Associations).

Criterion 24.5 - Amendments to the articles of association have to be notified to the Company Register within 30 days (Art. 22 of the Company Law). Art. 6 of the Company Law stipulates that unless such changes are filed to the Register, they will not have legal effect towards third parties. Changes in shareholding are only valid once they are recorded in the shareholder register (Art. 26 (4) and Art. 28 (1) of the Company Law).

However, Art. 5 of Law No. 98 of 7 June 2010 provides for sanctions for failure to comply with the reporting and filing obligations pursuant to this Law and the Company Law and subsequent amendments. Any such violation shall result in the application by the Office for Control Activities of an administrative sanction of €500 for each violation, also following a report by the competent

supervisory offices/bodies to which communications are to be addressed or with which documents have to be filed.

According to Art. 7 of the Law on Foundations, changes in the memorandum of association and the registered office must be communicated to the Court Registry. There is no legal provision to communicate changes of the personal details of legal representatives on a timely basis.

Art. 37 of the Law No. 129/2010 cross-references to the provisions of the Company Law shall also apply. Accordingly, amendments to the articles of association have to be notified to the Register of Associations within 30 days.

According to Art. 5 of the Law on Cooperatives amendments to the articles of association have to be notified with the Register of Cooperatives within 20 days.

The Law on Consortia does not stipulate any deadlines for filing amendments to the articles of association. Nevertheless, the authorities informed the AT that there is an “established practice” under which the Cancelleria Commerciale *de facto* applies the provisions set forth under Company Law. Accordingly, the 30 days deadline of Art. 22 Company Law applies.

Beneficial ownership information

Criterion 24.6 - Companies, foundations and similar legal entities are required to obtain and keep adequate, accurate and current information on their beneficial owners under Art. 22² (2) of the AML/CFT Law. In addition, the legal persons are obliged to report the beneficial ownership information to the Register of Beneficial Owners, which is administered by the Office Control Activities (OCA) (Art. 23⁴ (1)).

Criterion 24.7 - The beneficial ownership information must be reported by the legal person to the Register of Beneficial Owners (i) within a month from its creation or the change of the beneficial owner and (ii) whenever the change in the shareholder structure affects the identification of the beneficial owner (Art. 23⁴ (5), the AML/CFT Law). The directors are in charge of obtaining the information on beneficial owners and keeping it updated (Art. 22² (3)). The shareholder that fails to provide the director with the relevant information may have voting rights suspended. Moreover, omitted or false declarations regarding beneficial owners are criminalized according to Art 54 (1) AML/CFT Law and are punishable with imprisonment or fine.

Criterion 24.8 - As noted above, legal persons are required to maintain and submit the accurate and updated beneficial ownership information to the Register of Beneficial Owners, which can then be accessed by competent authorities under Art, 23⁴ (6) of the AML/CFT Law. Moreover, legal representatives of legal persons are specifically required to provide the beneficial ownership information to the Register of Beneficial Owners including the identity documents of beneficial owners, the date of commencement of beneficial ownership and underlying justification (Art, 23⁴ (3) (4)).

Criterion 24.9 - Companies are required to keep shareholder registries and decisions of the general meeting, the board of directors, the executive committee and the board of auditors throughout their existence (Art. 72 (4), the Company Law). After the dissolution or winding-up of companies, these registries and data shall be deposited to and kept at the registered office of the liquidator, a notary or an accountant for five years (Art. 113, the Company Law with further reference to the Company Law). All information recorded in the Register of Companies and the Register of Beneficial Owners of Legal Persons since the establishment of these registers remains recorded and historic entries remain published.

Other requirements

Criterion 24.10 - As noted above, the registers of different types of legal persons are public and can be freely accessed by anyone. The Register of Beneficial Owners can be accessed electronically by

the competent authorities including the FIA, supervisors and LEAs under Art. 23⁴ (8) of the AML/CFT Law.

Criterion 24.11 - Bearer shares and bearer share warrants are not allowed in San Marino. The Law on the Provisions for the Identification of the Beneficial Ownership Structure of Companies (no. 98 of 7 June 2008) repealed all regulatory provisions of the Company Law concerning anonymous companies and required conversion of their shares into registered shares by 30 September 2010. As a result, anonymous companies were transformed into SPAs (Art. 1 (4)).

Criterion 24.12 - San Marino's legal framework does not explicitly regulate nominee directors, but there are no prohibitions either. The Company Law requires that directors of companies have rights, duties and civil and criminal responsibilities in the performance of his/her activities as directors. The Companies Law regulating the public register of companies does not provide for the possibility of distinguishing between actual directors and "formal directors". As a result, all those who are entered in such registers are actual directors and thus are liable to civil and criminal effects.

There is no prohibition of nominee shareholders. However, authorities distinguish between "nominee shareholders" and "shareholders under fiduciary contracts". Shareholding under fiduciary contract (i.e. fiduciary shareholding activities) is a fiduciary activity (i.e. *Attività fiduciaria*), which is a "reserved activity" under the LISF and defined as: "By fiduciary activity means the holding of title to / the registration of the assets of third parties in execution of a mandate without representation" (Annex 1, letter c of the LISF). The authorities concur to the view of the AT that "activity of fiduciary shareholding" is the same activity as "nominee shareholding". Consequently, there is the possibility of nominee shareholding in San Marino.

Anyone carrying out fiduciary shareholding activities in an entrepreneurial and professional form (organized and for profit purposes) without the CBSM authorization and supervision incurs the crime of abuse of the fiduciary activity as a result of the combined provisions of Art. 3, letter c) of the Annex 1 and Art. 134 (1) of the LISF. These rules mean *argumentum ea contrario* that nominee shareholder activity is permitted, as long as it is not carried out in a professional and entrepreneurial manner. Authorities claim, that in these instances the AML/CFT preventive rules make this activity unfit to conceal the beneficial owner.

The CBSM has issued in 2010 Circular 2010-02, which sets forth specific provisions in relation to avoid the misuse of fiduciary activities. In 16 points the CBSM stipulates 11 prohibitions and 5 obligations for fiduciary companies, which are intended to provide for a sound and prudent management of fiduciary companies. According to CBSM Circular 2010-02 fiduciary administration of shareholdings (type 2 mandate) is defined as: the fiduciary companies acquires/underwrites, for participating purposes, a share or shares in a joint stock or limited company, in its own name, but on behalf, at the expense and risk, and in the interest of the mandator, subsequently managing the acquired interest on the basis of the mandator's prior written instructions (Page 4, point 1, letter b)). In the view of the AT this definition is tantamount to nominee shareholding. The 11 prohibitions and 5 obligations seem to establish a sound level of general transparency and further delineate the authorized activities of fiduciary companies. Point 11 of the Circular determines the general obligation of all fiduciary companies to disclose in deeds their fiduciary intervention, (so called "*contemplatio fiduciae*"). This obligation also applies to any act or contract signed by the fiduciary company in its own name, but on behalf of third parties, in performing a fiduciary mandate, regardless of the type of mandate. Fiduciary companies are required to disclose and include the identity of the mandatory, the number of shares held and in case of legal persons, also their beneficial owners to the Register of Fiduciary Shareholders. Like all other companies fiduciary companies are obliged to obtain and maintain information on the identity of the beneficial owners (Art. 22bis para. 2 and 3 of the AML/CFT Law). According to the authorities this includes information on the mandators. However, mandators are not mentioned in the definition of beneficial owners (Art. 1bis of Annex 1 to the AML/CFT Law).

Point 2 of the Circular stipulates a prohibition of fictitious interposition. This however relates to the relationship of the fiduciary company with third parties.

Fiduciary companies are licensed entities under the provisions of the LISF.

Fiduciary companies are also obliged parties under AML/CFT Law. Accordingly, they are bound by the general CDD and record keeping obligations in respect of the mandatory, which is their customer. Thus, fiduciary companies shall maintain information identifying their mandator and make this information available to the competent authorities. Fiduciary companies can hold title to shares of companies in San Marino. These are regulated entities and are supervised by CBSM. Fiduciary companies must declare their fiduciary status in dealings with third parties, while companies with their participation must disclose this in articles of association (Art. 17 (1), the Company Law). Fiduciary companies are also required to disclose to the CBSM the identification data of persons they provide services to, the number of shares held and in case of legal persons, also their BOs under Art. 2 (2) of the Law 98 of 2010. Fiduciary Companies are prohibited to act as directors of any other company (CBSM Circular 2010-02 point 11).

Criterion 24.13 - The failure to keep shareholder registries and decisions of the general meeting is punishable by a fine ranging from €2 000 to €25 000 (Art. 72 (7), the Company law).

The failure to provide basic information of companies is punishable with an administrative sanction of €500 for each violation (Art. 5 of Law 98/2010 as amended by Art 56 of Law 173/2018). The same provision applies to cooperatives and consortia. It has to be noted that from 2010 until 2018 the administrative penalty was €5 000 and in 2018 was decreased to €500. No information was provided about the reasons for this significant decrease. The failure to provide basic information of associations is punishable by administrative sanction of €2 000 for each individual violation (Art. 37 (5) of the Law 129/2010).

The failure to provide basic information of foundations is punishable by administrative sanctions ranging from €1 000 to €10 000, depending on the person/function of the perpetrator (Art. 68 Law on Foundations).

The failure to report accurate beneficial owner information on time to the Register of Beneficial Owners of Legal Persons is punishable with a fine from €5 000 to €10 000 (Art. 65³, the AML/CFT Law).

The sanctions are not proportionate and dissuasive. In particular, the sanction of €500 for failure to provide basic information on companies is considered too low, given that the vast majority of legal persons are companies under the Company Law.

Criterion 24.14 - The competent authorities, such as Judicial authorities, LEAs and the FIA have direct online access to registers of different types of legal persons (e.g. Company Register) and to the Register of Beneficial Owners. Thus, they are able to rapidly provide international cooperation in relation to basic and beneficial owner information on the basis of different legal provisions governing international cooperation (Art. 16 AML/CFT Law; Decree Law No. 45/2014). Insofar as the basic information is publically available in the Register of Companies it can also be accessed directly by foreign competent authorities on <https://registroimprese.cc.sm>.

Criterion 24.15 - There are no formal processes to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information. However, in practice, the quality of assistance received from other countries is monitored by the FIA on a case-by-case basis through the general monitoring of data received from its counterparts in course of its strategic analysis function.

Weighting and Conclusion

There are several shortcomings identified under R.24 criteria that are not minor ones, in particular under c.24.13 regarding the low level of administrative sanctions and c.24.15 regarding the lack of

formal processes to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information. **R.24 is rated PC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the 2011 MER San Marino was rated LC with the former R.34. The sanctions for the failure of resident trustees and resident agents to meet their duties were not considered dissuasive. There was also no clear obligation for resident agents to ask non-resident trustees in appropriate timeframes about changes to the trust certificate.

Criterion 25.1 -

(a) The trustees and persons holding equivalent positions for similar legal arrangements must obtain and keep adequate, accurate and current information on the beneficial owners of the trust under Art. 22² (5) of the AML/CFT Law. The beneficial owners of a trust include (i) the settlor, (ii) the trustee(s), (iii) the protector (if any), (iv) the beneficiaries, or where persons benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates and (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means (Art. 12 (6), the technical annex to the AML/CFT Law).

(b) According to Art. 32 of the Trust Act (42/2010), trustees may use professional service providers for advisory or other purposes. Although not explicitly required by the law, the authorities state that the basic information on those professionals is typically included in the assignment deeds or related contracts. Where a trustee delegates powers of managing or disposing of trust assets, the instrument of delegation must identify the delegate (Art. 34 of the Law 42/2010).

(c) PTs are a subtype of TCSPs and are OEs under the AML/CFT Law (Art. 1 (1) (n³)). Hence, the record-keeping requirements provided in the AML/CFT Law equally apply to them. In particular, PTs shall keep the CDD data, information and documents for at least five years following the end of a business relationship or carrying out of an occasional transaction or a professional activity (Art. 34 (1)).

Criterion 25.2 - As noted above, PTs are OEs and thus, have to conduct ongoing due diligence. In particular, Art. 22 (d) of the AML/CFT Law stipulates that CDD data, information and documents must be kept updated. Art. 22² (5) requires trustees and persons holding equivalent positions for similar legal arrangements to obtain and keep adequate, accurate and current information on beneficial owners of the trust and similar legal arrangements to allow OEs perform appropriate verification. NPTs, which do not receive remuneration are not required to fulfil the CDD obligations set out in art. 22 of AML/CFT Law, but according to art. 22 bis para. 5 of the AML/CFT Law shall obtain and keep adequate, accurate and current information on the beneficial owners of the trust and provide it to the OEs in order to facilitate the application of CDD measures.

Furthermore, Art. 23⁴ of the AML/CFT Law requires trustees to report beneficial owners of the trust to the Trust Register within a month of the establishment of a trust and in any case within a month of the change of the beneficial owner (Art. 23⁴ (5) of the AML/CFT law). The resident trustee or the resident agent must also create and keep updated the Book of Events, which reflects trust-related information, including changes in trustees and protectors, and the identification of beneficiaries (Art. 28 of the Trust Act; Art. 12 and Art. 13 of the DD (50/2010)).

There is no legal provision determining that trusts do not have a legal effect until their registration. The registration in the Trust Register only has a declarative effect towards third parties. However, the operations of a trust remain very limited until its registration since it is required to provide information and produce documentation relating to registration in the Trust Register. Moreover, trustees have to disclose their status towards third parties (Art. 22 bis para. 6 of the AML/CFT Law)

The Trust Register is administered by the CBMS. Under Art. 7 of the Trust Act, within 15 days from the creation of a trust, the resident trustee or the resident agent shall draw up a trust certificate, which includes the beneficial ownership information and is authenticated by a notary. The notary must then deposit the certificate to the Office of the Trust Register in 10 days (Art. 8). Anyone making amendments to the certificate of trust, must inform the trustee within thirty days. In case of a non-resident trustee, the resident agent must be informed within fifteen days (Art. 13). Failure to comply with these deadlines is punishable by administrative sanctions.

Criterion 25.3 - Art. 22² (6) of the AML/CFT Law determines that the trustees must declare their status to OEs when establishing a business or professional relationship or carrying out an occasional transaction.

Criterion 25.4 - There are no legal provisions preventing trustees from providing competent authorities information on the trust or for providing FIs/DNFBPs BO-related information. On the contrary, there are numerous legal provisions, which grant competent authorities' access to basic and beneficial ownership information about the trust. According to Art. 2 para. 4 of DD no. 50/2010, determines that the Trust Register is not subject to any limitations for research carried out or ordered by the JA, the FIU and LEAs that performing the functions of judicial police. According to Art. 23 quater para. 8 of the AML/CFT Law the JA, the FIU, the Central Bank, Police Forces, the Tax Office, the CLO and the Office for Control and Supervision over Economic Activities shall have access to the REGTET at the CBSM. The powers of the FIU according to Art. 5 of the AML/CFT Law include obtaining documents and carrying out inspections of OEs. Professional trusts are considered OEs. Non-professional trusts are not considered OEs and thus not covered by the FIU powers according to Art. 5 of the AML/CFT Law. However, the FIA has the power to request records, which have to be kept by NPTs. Upon request this documentation shall be immediately made available to the FIA (Art. 4 para. 2 of DD No. 49 of 16 March 2010).

According to Art. 22 bis paragraph 1 of the AML/CFT Law, the trustees, when customers of the OEs, have the obligation to provide them all data and information necessary in order to allow to carry out their CDD measures.

Criterion 25.5

(a) According to Art. 23⁴ of the AML/CFT Law, all the competent authorities (LEAs, JA, the FIA, the CBSM, the Tax Office, the CLO and the OCA) have timely, direct, online access to the Register of the Beneficial Owners of the Trust free of charge. In addition, under the AML/CFT Law and Art. 4 (1) (2) of the DD (no. 49 of 16 March 2010), the FIA has the power to obtain the beneficial ownership information from both professional and NPTs. In criminal investigations, LEAs can have direct access to the information held by the Trust Register. Judicial authorities also have the power to obtain information from the trustee or to directly access both the Trust Register and the Register of Beneficial Owners of the Trust (Art. 23 quarter para. 7 letter a) AML/CFT Law and Art. 2, para. 4, of Delegate Decree 50/2010).

(b) The residence of the trustee is recorded by the OEs during the CDD process, and is also registered both by the Trust Register and the Register of Beneficial Owners of the Trust (Art. 23 quarter para. 2 AML/CFT Law.) There are no limitations in obtaining access to this information. According to Art. 2 (4) of DD (no. 50/2010), the Trust Register can be accessed by the JA, the FIA and LEAs.

(c) Under the AML/CFT Law, the OEs are subject to CDD and record-keeping requirements in relation to trustees who are their customers. Thus, information relating to assets held or managed for the trustees must be recorded and kept by the OEs. According to Art. 34 (4) of the AML/CFT Law, all data, information and documents kept by the OEs must be made available to the FIA without delay.

Criterion 25.6 - Administrative cooperation and the exchange of information on tax matters is carried out by the CLO.

The Office of the Trust Register answers the requests for information received by the Court in the context of international letters rogatory, from the FIU and from the CLO.

International cooperation by the CBSM is governed by Art. 103 of the Law on Companies, and banking, Financial and Insurance Services (LISF) (see R.40).

The FIA exchanges the beneficial ownership information in the framework of FIU-to-FIU cooperation (see R.40).

Judicial authorities and LEA have powers assigned to obtain access to all necessary documents and information including beneficial owner information. The JA can exchange information relating to the trust internationally as part of the MLA procedures. LEAs can also exchange information internationally through the use of the INTERPOL channel. In the case of requests for information relating to the trust from homologues foreign LEAs, through the INTERPOL channel, the LEAs can acquire the necessary information by accessing to the Register of Beneficial Owner of the Trust, according to Art. 23 quarter, para. 7 of the AML/CFT Law.

Criterion 25.7 - The Trust Act provides for a range of administrative sanctions from €3 000 to €15 000 in case the trustee or the local agent failure to comply with legal provisions concerning the data in the trust certificate (Art. 7 & Art. 13). It also provides for criminal sanctions in case of unlawful exercise of the office of trustee.

PTs that are OEs or customers of OEs fall within the scope of sanctions laid down in the AML/CFT Act for the failure to meet CDD and record-keeping requirements (R.35 shortcomings apply).

The FIA also has the power to sanction NPTs in the event of non-documental conservation and failure to comply with the reporting obligation (Art. 36 AML/CFT Law in conjunction with Art. 4. para. 4 of DD no. 49/2010). The failure by NPTs to obtain and keep adequate, accurate and updated information on the beneficial owners is punishable by a pecuniary administrative sanction from €3 000 to €100 000 according to Art. 66 of the AML/CFT Law. There are no sanctions for non-PTs for the failure to hold basic information on professional service providers and delegates and for failure to keep this information updated (c.25.2).

Criterion 25.8 - In cases of failing to grant to competent authorities timely access to information regarding trusts San Marino's laws provide for proportionate and dissuasive sanctions. Pursuant to Art. 57 of the AML/CFT Law, the failure to grant the FIA timely access to information related to trusts represents a crime punishable with second-degree imprisonment and disqualification. These sanctions apply also to NPTs and NPTs service providers (art. 57 of the AML/CTF Law applies in conjunction with the art. 4, par. 4 of the DD n. 49/2010).

Similarly, Art. 140 of the LISF criminalizes impeding the exercise of the CBSM. In addition, the FIA has the power to sanction NPTs in the event of non-documental conservation and failure to comply with the reporting obligation (Art. 36 AML/CFT Law in conjunction with Art. 4. para. 4 of DD no. 49/2010). With regard to the LEAs, considering that their access to data and information, is carried out following the assignment of the Judicial Authorities, it is specified that any denied access by the trustees would be sanctioned on the basis of the articles of the CC and Criminal Procedure Code (CPC) for obstructing justice (Art. 73 CPC to Art. 78 CPC as for the production of records held by FIs, DNFBPs and other natural or legal persons, the search of persons and premises; Art 58bis and 58 ter of the CPC as for taking witness statements and seizing and obtaining evidence).

Weighting and Conclusion

There are minor shortcomings identified under c.25.4 regarding NPTs and under c.25.7 regarding the lack of sanctions for NPTs. **R.25 is rated LC.**

Recommendation 26 – Regulation and supervision of financial institutions

In 2011 MER San Marino was rated PC with the former R.23. In the absence of a risk assessment, the implementation of an adequate risk-based supervision was not demonstrated. Implementing measures (e.g. the FIA Inspections Manual) did not incorporate all key elements of risk profiling and do not cover offsite surveillance. Lack of programmatic approach in off-site surveillance, consistency in the planning and sufficiency in the coverage of on-site inspections. Supervisory arrangements and performance failed to provide for efficient implementation of the supervision function.

Criterion 26.1 – The FIA is a designated authority responsible for supervising compliance with the obligations under the AML/CFT Law, including relevant instructions and circulars issued by the Agency (Art. 4(1)(e) of the AML/CFT Law). The CBSM is prudential supervisor responsible for regulation and supervision of banking, financial and insurance sectors (Art. 37-39 of the Law 165/2005) and responsible for licensing FIs.

Criterion 26.2 – Core Principle institutions, other FIs, MVTS and money or currency exchange service providers require to be licensed by the CBSM to provide financial services in San Marino (Art. 3 of the Law 165/2005 and Attachment 1). The CBSM authorization to conduct banking activity is provided by CBSM Regulation 2007-07, part III. There is no direct prohibition on establishing or maintaining of shell banks. Nevertheless, the existing provisions, include the obligation to have a registered office and, if not identical, their principal place of business and management, within the territory of San Marino (Regulation 2007-07, part III., Art. 13(c) Law 165/2005). This requirement ensures that shell bank cannot be established in San Marino.

Criterion 26.3 –For all authorised entities (banks, non-bank FIs, professional trustees) that exercise reserved activities CBSM verifies fit and proper requirements.

According to Art. 18 of Law 165/2005, CBSM is required to verify good repute of the owners of substantial participations in an authorised party. Specific requirements regarding good repute of the owners of substantial participations in different FIs are outlined in sector-specific CBSM regulations. Based on these regulation the authorised party is required to provide criminal record certificates, including information on any pending charges, and confirmation on the lack of administrative penalties for actions taken as a corporate officer in the last 5 years by the applicant. This information is subsequently verified by the CBSM.

Associates of criminals are prevented from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a FI if a) they are convicted for criminal acts themselves or are subject to ongoing criminal proceedings, and b) such association is apparent from documents provided or verification thereof. , At the same time legislation and internal documents do not prescribe *expressis verbis* a standalone requirement to determine association with criminals and to refuse holding offices of administration, management or control in a FI.

To ensure the sound and prudent management of RE, presence of opaque corporate structures or lack of clarity on the origin of the funds is sufficient to deny authorization to purchase significant shareholdings or control. According to the offsite inspection manual CBSM, conducts adverse media checks during market entry for FIs whereby, although not explicitly required, potential association with criminals could be detected. Upon negative findings of adverse media checks further assessment is initiated.

Based on the CBSM Regulation 2007-07 for credit institutions, which is a reference model for the CBSM regulations governing other sectors (e.g. financial companies, management companies, insurance companies and payment institutions), the CBSM conducts ongoing monitoring of fit and proper requirements for FIs after the licence has been granted. The corporate managers are evaluated when the office is renewed or when events occur which, also based on the operating characteristics of the bank, affect the situation of the corporate manager, his specific role or the

collective composition of the competent body (Art. IV.III.2) by the body to which the manager belongs (Articles IV.III.3 and IV.III.4). The CBSM subsequently re-evaluates the documents and decision (Articles IV.III.5 and IV.III.6), which may result in revocation, suspension and removal from office (Articles IV.IV.1 to IV.IV.7). The CBSM is authorized to request information on individual managers and decide upon their suitability any time upon evidence suggesting such actions. The documents required to prove that the shareholders (persons who directly or indirectly hold major holdings) meet the relevant requirements must be submitted to the Central Bank every three years (Art. V.V.4). These documents are checked by the CBSM in order to verify that the requirements leading to the authorisation prior to the acquisition of the holdings (Art. V.V.1) continue to be met. No potential association with criminals is checked on an ongoing basis.

Criterion 26.4 – FIs are subject to the following:

(a) Core Principles Institutions: Core principal institutions require authorisation by the CBSM and are OEs according to Art. 17 (1)(a) and Art. 18 (1) of Law 92/2008. Core Principle institutions are supervised by CBSM regarding fulfilment of obligations related to provision of financial services and for AML/CFT compliance are supervised by the FIA. The core principles in substance are primarily included in Law 165/2005, Law No. 96 of 29 June 2005 (Law 96/2005) regarding the powers of CBSB, Decree 76/2006 (in relation to corrective and sanctioning powers of CBSM) and CBSM regulations. San Marino is not an International Organisation of Securities Commissions (IOSCO) member country.

The IMF conducted a Financial Sector Assessment Programme in 2010. Recommendations of IMF have been addressed to some extent by extending the CBSM autonomy to initiate extraordinary administration and compulsory administrative winding-up procedures without the requirement of previous authorization of the Government through the CSC (Law No. 178 of 4 November 2010, Art. 1 and Art. 2) and eliminated the Government authorisation for the establishment of new banks (Art. 15), allowing the CBSM full technical autonomy of discretion (Art 15, Decree Law No. 50 of 26 March 2019 (ratifying DD no. 176/2019)). Based on the information provided AT cannot conclude on San Marino's compliance with BCBS 1,2,3, 5,6,7,11,12,13,14.

The IOSCO principles are applicable to San Marino only with regard to investment services and consumer protection and not with regard to the structure of regulated markets, as they are absent in San Marino. The 2006 regulations on investment services (Regulation 2006-03) took into account the principles of international best practices and European legislation when drafting the regulation. Implementation of MIFID II Directive (2014/65/EU) is in the process. No self-assessment for IOSCO principles has been provided to AT.

In relation to the International Association of Insurance Supervisors (IAIS) Principles, the CBSM has conducted a partial self-assessment in 2015. As a result, Insurance Core Principle (ICP) 9 (supervisory review and reporting), ICP10 (preventive and corrective measures) and ICP11 (enforcement) were deemed to be largely observed. No information on compliance with other relevant IAIS Principles 1, 3-11, 18, 21-23, and 25 was provided. From the provided information, AT cannot conclude if San Marino has implemented all relevant principles of IAIS.

Consolidated group supervision for AML/CFT: The requirements for OEs belonging to groups, for foreign branches and subsidiaries are set out in Art. 45 of AML/CFT Law. The scope of AML/CFT supervision is governed by Art. 5 and 5 ter of the AML/CFT Law. While there are no provisions in the AML/CFT Law limiting the scope of AML/CFT supervision, there are no provisions in the AML/CFT Law expressly requiring consolidated group supervision for AML/CFT.

(b) *Other FIs:* other FIs providing “reserved” activities according to Attachment 1 of Law 165/2005 require authorisation by the CBSM and as OEs (Art. 17 (1)(a) and Art. 18 (1) of Law 92/2008) are subject to AML/CFT requirements and are supervised for AML/CFT compliance by the FIA.

Criterion 26.5 – The supervisory activities of the FIA consist of on-site inspections, off-site activities and other monitoring mechanisms. The FIA supervises AML/CFT compliance by adopting a RBA pursuant to Art. 4 (1)(e) of the Law 92/2008.

(a) Based on its assessment of ML/TF risks to which OEs are exposed, the FIA establishes the frequency and intensity of supervision of such entities. The FIA has developed a RBS Model (RBSM) to assess the ML/TF risks of the individual OEs, assigning a ML/TF risk rating to each obliged entity. The RBSM analyses information transmitted by all the OEs through the periodic compilation of questionnaires, which are managed through automated information flows; through these questionnaires obtain answers in relation to the adequacy of the policies, processes and procedures adopted by the OEs, as well as the adequacy of the internal control system and the continuous training of personnel, highlighting any vulnerabilities, among other information, e.g. analysis of STRs, etc.

(b) The risk identified for each obliged party is adjusted with the level of risks-sectors emerging from NRA. RBSM serves as basis to the Annual Supervisory Plan. The Annual Supervisory Plan defines the list of OEs and the supervisory activities to be carried out during the year and may be changed during the year as a result of further significant facts or events.

(c) The Annual Supervisory Plan takes into consideration the number and type of obligated persons, as well as their risks and weight in the sector. However, the supervisory activity is performed on a level of each separate entity and not on the level of the financial group.

Criterion 26.6 – Art. 5 ter (2) of the Law 92/2008, requires FIA to assess ML/TF risk profile of FIs, including the risks of non-compliance with obligations under AML/CFT Law, instructions and circulars issued by FIA. Risk profile of FIs is reviewed periodically and when there are major events or developments in their management and operations. This is reflected in the RBSM, as the components underlying its assessments and the rankings are periodically updated to maintain a current information on the risk exposure. The updates are made with various timing from every two years to continuous based on collection of additional information and results of on-sites and off-sites. Based on significant events or important changes in the management structure and in the operating activities of the OEs supervisory activity is reviewed. However, according to RBSM, this assessment is performed individually to each entity belonging to a domestic or international financial group and no group-wide assessments are performed. **Weighting and Conclusion**

There are deficiencies in relation to market entry controls. Even if checked it is not clear if potential association with criminals in itself would be legal ground to decline authorisation of FIs. In the context of San Marino this deficiency should be considered material. From the provided information the AT could not conclude on compliance with relevant Basel Core Principles, IOSCO and IAIS Principles. Moreover there are no clear obligations to perform consolidated group-wide supervisory activity or to perform group-wide ML/TF risk assessments. . The identified deficiencies in the San Marino's legal framework amount to moderate shortcomings and warrant a partially compliant rating and **R.26 is rated PC**.

Recommendation 27 – Powers of supervisors

In the 2011 MER San Marino was rated C with the former R.29.

Criterion 27.1 – The FIA is responsible for the supervision and ensuring compliance by FIs with AML/CFT obligations. For this purpose the FIA has pursuant to Art. 5 of Law 92/2008 powers to order the production of documents necessary for supervision, ask for information from other governmental agencies and CBSM, carry out on-site and off-site inspections, order and obtain information and documents necessary for assessment of ML/TF risks and to verify compliance with applicable legislation and regulations, order the blocking of assets and funds, suspend transactions, order FIs to monitor specific business relationships and gather and provide information.

92. CBSM is responsible for prudential supervision and market entry of FIs. CBSM has powers and functions as set forth in Law 96/2005 and Law 165/2005, which include conducting inspections at the offices and branches of the authorized parties, as well as requesting information, order the disclosure of documents and carry out the checks and verifications deemed necessary, including those on non-reserved activities.

Criterion 27.2 – The FIA has the power to carry out on-site inspection and demand production of any information, data or documents needed for supervision of FIs with AML/CFT requirements. CBSM has powers to include conducting inspections at the offices and branches of the authorized parties (Law 96/2005 and Law 165/2005).

Criterion 27.3 –The FIA has the powers to compel production of any information relevant to monitoring compliance with the AML/CFT requirements. The FIA has the power to compel production of information by means of its written reasoned acts. CBSM pursuant to Law 96/2005 and Law 165/2005 may have access to the company’s accounts and to all its books, notes and documents; it may challenge the directors and any employee or officer within the sphere of each one’s duties, in order to obtain information and clarifications.

Criterion 27.4 – Supervisors are authorised to impose a range of sanctions for AML/CFT breaches, including disciplinary and financial sanctions. See Recommendation 35. However, available sanctions for FIA do not include a permanent withdrawal of a license. The amount of pecuniary fines is low (unless in case of repeated, systemic or multiple violations, which provide an economic advantage) and do not offer any range in terms of different sectors.

Weighting and Conclusion

Most criteria are met. There are deficiencies in relation to FIAs power to permanently withdraw the license. The amounts of pecuniary fines are low and do not offer any range in terms of different sectors. For these reasons **R.27 is rated LC**.

Recommendation 28 – Regulation and supervision of DNFBPs

In the 2011 MER San Marino was rated PC with former R. 24. FIA lacked adequate resources to perform its supervisory functions in addition to its numerous further functions. Very low level and limited coverage of on-site inspections. No comprehensive analysis of the quality of the CDD measures applied by DNFBPs. No measures taken to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casino.

Criterion 28.1 (N/A) - Gambling is prohibited in San Marino and there are no casinos and no internet casinos in San Marino. This means that operating casinos (including internet casinos) are prohibited (Art. 1 (5) of Law No. 67 of 25 July 2000). Nonetheless, under Law 67/2000 and DD no. 169 of 28 October 2014 (Decree 169/2014) some limited betting and gaming activities are permitted (e.g. running of games, prize contests, lotteries, lotto and games of chance).

Criterion 28.2 and 28.3 – The FIA is the designated authority responsible for AML/CFT regulation and supervision (paragraph 1(e) of Art. 4 of the AML/CFT Law). Pursuant to Art. 17 (1)(b) and (c) and Art. 19 (1) and Art. 20 of Law 92/2008 DNFBP’s as non-financial entities and professionals are OEs and as such are regulated and supervised for compliance with AML/CFT requirements by the FIA. They are subject to same systems for monitoring compliance with AML/CFT requirements as FIs.

Criterion 28.4 – The functions of the FIA include (i) issuing instructions, circulars and guidelines regarding the prevention and combating of money laundering and terrorist financing, (ii) supervising compliance with relevant legislation, instructions and circulars issued by the Agency by adopting a RBA pursuant to Art 4 (1)(d) and (e) of Law 92/2008.

(a) The FIA has powers to perform its functions, including powers to monitor compliance as described in TC 27.2 and 27.3

(b) Measures taken to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP depend on the legal formation and the type of DNFBP.

DNFBPs incorporated as legal entities: Legal entities in San Marino are subject to “Unfit Person” checks upon establishment. Pursuant to Law No. 47 of 23 February 2006 (Law 47/2006) none of the persons acting as shareholders, BOs and senior managers shall be persons, who have been convicted of certain criminal acts or whose activities have resulted in liquidation or revocation of a licence, i.e. be considered as “Unfit Person” according to Art. 1 section 1 subsection 9 of Law 47/2006. This information is collected and verified upon establishment by lawyers and notaries. Lawyers and notaries perform customer due diligence (CDD) measures and collect documentation during the establishment of companies in general.

Once the company is established, it becomes operational only with the obtaining of the license. The OEA performs controls during the establishment of companies and for natural persons in the context of issuing licenses for economic activity. Law 40/2014 sets up subjective and objective requirements for the obtaining of individual and company’s licenses (art. 6 of the Law n. 40/2014). Criminal record and pending charges are checked upon obtaining a commercial activity licence also. However, there are no procedures for lawyers and notaries or the OEA to check for association with criminals or to define the association with criminals outside of pending criminal charges. Even if association with criminals would be identified through adverse media or other types of *ad hoc* checks, no provision exists to decline persons from being professionally accredited, or to hold (or to be the beneficial owner of) a significant or controlling interest, or to hold a management function in a DNFBP on this basis alone. DNFBPs acting as self-employed: Lawyers, notaries, accountants, auditors and REAs acting as self-employed persons, are subject to checks on their professional requirements and criminal record and pending charges controls (Law n. 28 of 20 February 1991, Art. 51 all professionals; lawyers/notaries: Decree no. 56 of 26 April 1995, Decree no 105 18 July 201, art. 40, Law n. 73 of 30 April 2014, Order of Lawyers and Notaries Art.5-7, FIA Instruction n. 003 of 13 June 2019 Art.n.4; accountants: DD no. 201 of 29 December 2010, II Title, art.5 -7, the FIA Instruction n. 003 of 4 October 2019; auditors: Law n. 146 of 27 October 2004, Decree Law n.96 of 27 July 2012 and Decree Law n. 201 of 22 December 2011). Accountants, lawyers and notaries are banned from the profession upon certain criminal or disciplinary offences. The same deficiencies in relation to absence of formal checks on possible association with criminals exist for DNFBPs acting as self-employed. For other DNFBPs that are not considered professionals no fit and proper requirements exist when acting as self-employed.

(c) The FIA has sanctions available in line with R.35 to deal with failure to comply with AML/CFT requirements. The range of sanctions available, on the other hand, may not always be proportionate as there are shortcomings in the range of fines and administrative measures as described in R.35.

Criterion 28.5 –FIA supervises AML/CFT compliance of all OEs (including all DNFBP’s) by adopting a RBA pursuant to Art. 4 (1)(e) of Law 92/2008. Based on its assessment of ML/TF risks to which OEs are exposed, the FIA establishes the frequency and intensity of supervision of such entities. The FIA has developed a RBSM to assess the ML/TF risks of OEs, assigning a ML/TF risk rating to each obliged entity. The RBSM analyses information transmitted by all the OEs through the periodic compilation of questionnaires, which are managed through automated information flows; through these questionnaires obtain answers in relation to the adequacy of the policies, processes and procedures adopted by the OEs, as well as the adequacy of the internal control system and the continuous training of personnel, highlighting any vulnerabilities, among other information, e.g. analysis of STRs, etc. The risk identified for each obliged entity is adjusted with the level of risks-sectors emerging from NRA. A "General Questionnaire" is sent to all OEs and must be completed by the legal representative or license holder.

93. The RBSM serves as the basis for the Annual Supervisory Plan. The Annual Supervisory Plan defines the list of OEs and the supervisory activities to be carried out during the year and may be changed during the year as a result of further significant facts or events. The Annual Supervisory Plan takes into consideration the number and type of obligated persons, as well as their risks and weight in the sector.

Weighting and Conclusion

There are no procedures for lawyers and notaries or the OEA to check for association with criminals or to define the association with criminals outside of (pending) criminal charges in a unified manner. Even if association with criminals would be identified through adverse media or other types of independent un-regulated *ad hoc* checks, no provision exists to decline persons from being professionally accredited, or to hold (or to be the beneficial owner of) a significant or controlling interest, or to hold a management function in a DNFBP on this basis alone (c.28.4 b). The range of sanctions available, is not proportionate as there are shortcomings in the range of fines and administrative measures as described in R.35 (c.28.4 c). **R.28 is rated PC.**

Recommendation 29 - Financial intelligence units

In the 2011 MER San Marino was rated LC with the former R.26. The main deficiency was related to effectiveness. In particular it was noted that the numerous additional functions of FIA and current practice of overreliance on FIA by the JA for financial investigations and implementation of MLA requests may impact on the performance of its core functions; such as the dissemination function, and on the adequacy of resources; this may also be reflected in the limited number of disseminated cases to the JA.

Criterion 29.1 The FIA is established at the Central Bank of San Marino (paragraph 1 of Art. 2 of the AML/CFT Law). Pursuant to item s) of paragraph 1 of Art. 1 of the AML/CFT Law the FIA should serve as the central national authority responsible for receiving, requesting, analysing and disseminating to the competent authority's information relating to the prevention and combating of money laundering and terrorist financing. Even though the reference is only made to ML, its definition provides for a broader interpretation which captures predicate offences (paragraph 2 of Art. 1 of the AML/CFT Law).

Criterion 29.2 The FIA serves as the central agency for the receipt of STRs and other communications provided for by the AML/CFT Law (item a) of paragraph 1 of Art. 4 of the AML/CFT Law).

(a) STRs filed by FIs and DNFBPs as required by Art. 36 of the AML/CFT Law;

(b) Objective reports filed by FIs and DNFBPs as required by Art. 40 *quarter* of the AML/CFT Law. Moreover, the FIA receives cross border declarations from the Police Forces (Art. 2 of the DD n.74/2009).

Criterion 29.3

(a) The Agency by means of a written reasoned act order the OEs to produce or deliver documents or to disclose data and information according to the procedures and time limits set out by the Agency (item a) of paragraph 1 of Art. 5 of the AML/CFT Law).

(b) The FIA has direct and indirect access to the widest range of financial, administrative and law enforcement information (Art. 8 of the AML/CFT Law).

94. Criterion 29.4

(a) The FIA conducts the operational analysis (item a) of paragraph 1 of Art. 5 bis of the AML/CFT Law);

(b) The FIA conducts the strategic analysis (item b) of paragraph 1 of Art. 5 bis of the AML/CFT Law).

Criterion 29.5 The FIA disseminates spontaneously the results of its analysis using dedicated, secure and protected channels to the JA (paragraph 1 of Art. 7 of the AML/CFT Law), the police authority (paragraphs 1 and 3 of Art. 12 of the AML/CFT Law) and the Central Bank (paragraph 1 of Art. 14 of the AML/CFT Law).

Also, the FIA disseminates upon request information using dedicated, secure and protected channels to the police authority (paragraph 1 of Art. 12 of the AML/CFT Law) and to the Central Bank (paragraph 1 of Art. 14 of the AML/CFT Law) on the basis of ad hoc MoUs. The FIA is empowered to provide information to the JA upon request (See c.30.1, c.31.1 and c.31.4).

Criterion 29.6

(a) Art. 9 of the AML/CFT Law requires that all data and information obtained by the FIA shall be covered by official secrecy, also in respect of public administrations, except for the cases of reporting or exchange of information set forth in the AML/CFT Law. Paragraph 2 of this Art. also obliges the FIA to implement measures ensuring that the data and information acquired cannot be accessed by third parties. In particular, the FIA IT system protects information with a wide range of tools as an Intrusion Detection and Protection System, Firewalls and PKI encryption of data (externally). Moreover, FIA IT system could be accessed only by user id profile and password (software product default passwords are mandatorily changed at installation) and the functions assigned to each user in the management and use of the system differ according to the level of responsibility of the employees (i.e. a separation of duties is established and the system create log files).

In addition, pursuant to Art. 1(3) of the DD 146/2008, the FIA is required to adopt suitable measures to guarantee, with maximum effectiveness, that the documents, data and information acquired, as well as the computer systems, are accessible only to the authorised personnel of the FIA. Procedures for handling, storage and dissemination of information are foreseen by the Operative Manual for the receipt, management, archiving and transmission of information and documents (paragraphs 5, 6 and 14).

(b) All employees of the FIA have the same security clearance level relating to accessing the information. For some activities - especially those relating to communication with the outside (for example, sending of requests for information to the OEs, sending of feedback to the OEs, the dissemination of information) - must be authorised (also through an IT role-based authorisation process) by the direction or by the heads of operational unit. When a new employee is hired or transferred to the FIA, FIA director explicitly informs him/her about the obligations of confidentiality established by the law and this is also emphasized several times during the employment relationship.

(c) The FIA IT architecture is kept insulated into alarmed rack in separate premises provided by the outsourcer and placed in the technological room located in the lower level of Central Bank's building. The second rack, with the same characteristics of main alarmed rack, is located into outsourcer premises (for Active-Passive architecture). The access to the rack from outsourcer's technicians is allowed, and logged, only via FIA's IT Officer. Please also refer to information specified under c.29.6(a). The FIA premises are equipped with cameras and electronic entrance allowed only with badges provided only to the FIA staff.

Criterion 29.7 -

(a) According to paragraph 2 of Art. 2 of the AML/CFT Law the FIA performs its functions in complete autonomy and independence.

(b) The FIA can make arrangements and engage independently with other national authorities (Art. 11, paragraph 1 of Art. 12, paragraph 3 of Art. 14 of the AML/CFT Law) and foreign counterparts (paragraphs 1 and 6 of Art. 16 of the AML/CFT Law).

(c) The FIA is established at the Central Bank of the Republic of San Marino. The FIA core functions are clearly set out under Art. 4 of the AML/CFT Law, which are distinct from those of the CBSM.

(d) Financial (Art. 12 of the FIA Regulation), human (paragraph 3 of Art. 7 of the FIA Regulation; paragraph 1 of Art. 3, paragraphs 3 and 4 of Art. 2 of the AML/CFT Law) and IT (paragraph 2 of Art. 1 of the FIA Regulation) resources are provided to the FIA to properly and independently fulfil its functions and objectives.

Criterion 29.8 The FIA is a member of the Egmont Group since 2005.

Weighting and Conclusion

R.29 is rated C.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In the 2011 MER San Marino received PC for the former R.27. The deficiencies identified were related to effectiveness issues (e.g. low level of ML investigations, LEA's ability to carry out complex investigations).

Criterion 30.1 – The Civil Police, the Gendarmerie and the Fortress Guard (Guardia di Rocca) – exercise both public security and investigative functions. The Civil Police is a non-military corps dealing, inter alia, with tax fraud, fraud and certain economic crimes through the Anti-fraud Squad (“Nucleo Antifrode”). The Gendarmerie is a military Police force with specific competences concerning public order and security matters and deals i.a. with drug offenses, terrorism, cybercrime and crimes against minors. The Fortress Guard is a military police force responsible for public order, which also carries out border controls and is entrusted with customs duties.

All three LEAs have functions and powers to investigate ML, associated predicate offences and TF.

Pursuant to art. 12 §2. of the AML/CFT Law “in the exercise of its functions, the police authority shall carry out, also on its own initiative, activities for the prevention and combatting of money laundering and terrorist financing”

Art. 12 §4 of the AML/CFT Law further provides that “if, in the exercise of its functions, the police authority has reason to believe that the funds derive from criminal activity or may be used for the purposes of money laundering” it may request the assistance of the FIU and obtain information from the FIU or OEs, through the FIA.

Where LEA have detected information revealing elements of crime including ML, associated predicate offenses and TF, such LEAs shall immediately inform the Investigating Judge, who thereupon initiates a criminal investigation.

The Investigating Judge has the power to direct the three law enforcement authorities to serve as judicial police in criminal investigations.

During the preliminary investigation stage, prosecuting functions are performed by the Investigating Judge who is assisted by the LEA which act as judicial police.

Finally, pursuant to Art. 5 §4 of the AML/CFT Law the judicial authorities can delegate to the FIU the carrying out of certain investigations. The FIU then acts as judicial Police.

Criterion 30.2 - Sammarinese law allows LEA to conduct parallel financial investigations. When LEAs carry out investigations on offences generating proceeds of crime and/or ML/TF, LEAs can request the assistance of the FIA to collect information available to the latter or in order to request information to OEs.

In the framework of a criminal investigations, where LEAs act as Judicial Police, the activities are ordered and monitored by the Investigating Judge who decides how to carry out financial investigations or other types of inquiries.

Criterion 30.3 - Under the AML/CFT Law, the FIA has powers to identify and trace assets when suspicious of ML, associated predicate offences and TF arise. It is also empowered to postpone transactions, to block funds, assets or other economic resources and to monitor any financial business relationships. Postponements and monitoring measures may be ordered by the FIA, also upon request of the JA as well as of a foreign FIU.

Pursuant to art. 12 of the AML/CFT Law LEAs, in the course of a investigation, may request the assistance of the FIA to obtain information already held by the latter or held by OEs. They can also use their own investigative power, in the course of a criminal investigation as delegated by an Investigating Judge.

On cross border cash controls, LEAs can inquire about the source and destination of the funds and request underlying documents, stop them if there is a suspicion that they are proceeds of crime and order administrative seizure of cash and similar instruments transferred or attempted to be transferred exceeding the equivalent value of €10 000 (up to a certain limit).

During criminal investigations, some precautionary measures can be adopted in relation to property (seizure and forfeiture: Art. 58ter and following and Art. 74 of the CPC). Such measures will be ordered by the JA and executed by LEAs. Pursuant to the national authorities, the legislative framework allows for any such identification, seizure or freezing of assets to be done expeditiously.

Criterion 30.4 (N/A) - Within the San Marino legal framework, the Investigating Judge is a competent authority that has the responsibility to initiate criminal proceeding and to pursue investigations (cf. 30.1).

Criterion 30.5 (N/A) - San Marino has not designated any specific anti-corruption enforcement authority. Corruption and any related ML/FT offences are addressed in the same manner as other predicate offences.

Weighting and Conclusion

R.30 is rated C.

Recommendation 31 - Powers of law enforcement and investigative authorities

In the 2011 MER San Marino was rated LC with the former R. 28; this recommendation was hence not assessed in 2011 MER. The new R.31 contains more detailed requirements.

Criterion 31.1 - Competent authorities conducting investigations of ML, associated predicate offences and FT are empowered by applicable legislation to obtain access to all necessary documents and information for use in those investigations and in prosecutions and related actions, including powers to use compulsory measures for: (a) the production of records held by FIs, DNFBPs and other natural or legal persons (art. 12 AML/CFT Law); (b) the search of persons and premises (from Art. 73 CPC to Art. 78 CPC); (c) taking witness statements (art. 160 CPC) and (d) seizing and obtaining evidence (art. 58bis and 58 ter CPC).

Criterion 31.2 - San Marino's competent authorities are empowered to use a wide range of investigative techniques for the criminal investigations of ML, associated predicate offences and FT, such as undercover operations (Law 28/2004), intercepting communications (Law 98/2009), accessing computer systems (art. 58 bis of CPC) and controlled deliveries (Law 28/2004).

Criterion 31.3 - LEAs can identify in a timely manner whether persons hold or control accounts based on a court order (during the criminal investigation) or via the FIA (art. 12 AML/CFT Law, during investigations). In the course of the criminal investigation, the LEAs can access the financial information swiftly requesting a court order from the JA, which is issued in few hours in urgent cases. As for the investigations carried out by the LEAs, information is obtained with the help of the FIA

which can access immediately the information requested. With regard to the process of identification of assets, this does not imply a prior notification to the owner.

Criterion 31.4 – LEAs conducting investigations of money laundering, associated predicate offences and terrorist financing are empowered to ask for all relevant information held by the FIA based on art. 12 of the AML/CFT Law.

Weighting and Conclusion

R. 32 is rated C.

Recommendation 32 – Cash Couriers

In the 2011 MER San Marino was rated PC on former SR IX. Identified deficiencies related to the level of sanctions and effectiveness issues (e.g. training of staff, no risk assessment).

Criterion 32.1 – San Marino has a declaration system for incoming/outgoing cross-border transportation of currency and bearer negotiable instruments. DD no. 74 of 19 June 2009, as amended by Decree Law No. 187 of 26 November 2010, provides for the obligation for any natural person entering or leaving the territory of the Republic of San Marino to declare the transport of currency of more than €10 000 or the equivalent value by making a written declaration to the central or branch offices of the law enforcement agencies (i.e. the Gendarmerie Corps, the Civil Police Corps and the Fortress Guard). Such obligation also applies to BNI, mail and cargo transportation (DL 187, law 190 of 25 November 2014 and Art. 7 DD 153/2020).

Criterion 32.2 – Persons making physical cross-border transportation of currency or BNI of a value equal to or exceeding €10 000 are required to make a written declaration to central or branch offices of the law enforcement agencies. The declaration form requires certain information to be provided, including, inter alia, the details of the person submitting the declaration, the party on whose behalf the transfer is being made if other than the person submitting the declaration, the type of cash or instruments and the amount as well as further information and the date and signature. Applicable legislation provides that the obligation of declaration is not fulfilled if the information provided is incorrect or incomplete.

Criterion 32.3 – The criterion is not applicable since San Marino has a declaration system.

Criterion 32.4 – LEAs are tasked with checking the truthfulness of the data provided on the declaration form by requesting and obtaining detailed information on the origin, destination and intended use of assets concerned. Any false answers given to the police represents an offence of false statements to public officers (art. 297 CC) and LEAs can perform investigations to ascertain whether an offence has been committed, including by requesting further information from the bearer.

Criterion 32.5 – Making a false declaration or failing to file the declaration or providing inaccurate or incomplete information is punished by an administrative sanction of up to 40% of the amount transferred or attempted to be transferred, exceeding the equivalent value of €10 000, with a minimum sanction of €200 (art 4 of Decree 74/2009). This sanction is applied even if the facts constitute an offence pursuant to other applicable legislation that can be prosecuted separately. False declarations are reported to the Court and prosecuted as offence of false statement (Art. 297 of the CC). Pecuniary sanctions are immediately applied. In application of Art. 5 of the Decree 74/2009, anyone who omits to provide the personal details of the person on whose behalf they are transferring cash or similar instruments to and from foreign countries or provides false information shall be punished by terms of imprisonment or second degree arrest or with a third degree daily fine. Finally, in case of violation of Art. 2 of the Decree 74/2009, currency and similar instruments transferred or attempted to be transferred exceeding the equivalent value of €10 000 shall be subject to administrative seizure (Art. 6 of the Decree).

Criterion 32.6 – Art. 9 of Decree 74/2009 provides that copies of all declarations are transmitted to the FIA within the tenth day following the reference months with the exception of a transmission within next working day in circumstances suggesting that sums of cash are related to ML and TF. The same Decree 74/2009 requires LEAs to immediately inform the FIA of any cross border movement of gold, precious stones or metal considered to be suspicious. LEAs are further required to draw up an official report on the seizures made and the declarations submitted by the persons involved and to forward it to the FIA.

Criterion 32.7 – Pursuant to the authorities, coordination is carried out through dedicated meetings, correspondences and continuous dialogue between the Fortress Guard and the FIA. Coordination among authorities (Gendarmerie, Civil Police, Fortress Guard and FIA) occurs in the context of Art. 12 of the AML/CFT Law and MOUs signed between these authorities and the FIA. Moreover, at operation level, such cooperation and coordination is also assured by all LEAs accessing to the unique databases where Police information, including information on cross-border activities, is gathered by all three Police Forces.

Criterion 32.8 – LEAs can seize currency/BNI suspected to be linked to ML/TF and predicate offenses pursuant to art. 58ter CPC. Art. 6 of the DD 74/2009 empowers the authorities to seize the undeclared or falsely-declared amount in excess of €10 000 (up to 40% of the amount exceeding the threshold or the whole amount if it is indivisible)

Criterion 32.9 –

The FIA can exchange information on the basis of Decree 74/2009 and art. 16 of the AML/CFT Law.

All declarations ultimately received by the FIA are uploaded to the FIA database and are used by it to perform its functions, including in the field of international cooperation. The database contains information on each person registered. The retention period of such data is 30 years, following which the documentation can be transferred to another authority for archiving purposes. The retention of such information applies to all declarations, including declarations where the prescribed threshold is exceeded or when there is a false declaration or there is a suspicious of ML/TF. Verbal reports of the Fortress Guard are available to the FIA, which can use such information and documents to perform its functions. The Fortress Guard has a database which is updated every 3 or 4 days with information on the *ad hoc* verbal reports and other controls carried out.

Criterion 32.10 – The information collected through the declaration system and transmitted to the FIA is subject to the “official secrecy” set forth under art. 9 of the AML/CFT Law. The authorities state that these provisions do not restrict trade payments between San Marino and other countries or the freedom of capital movements.

Criterion 32.11 – Persons who are carrying out a physical cross-border transportation of currency or BNI that are related to ML/FT or predicate offences are subject to convictions for ML/FT. Upon conviction for ML/FT, the cash or other monetary instruments are subject to confiscation (see R.4). Sanctions are proportionate and dissuasive.

Weighting and Conclusion

R.32 is rated C.

Recommendation 33 – Statistics

In the 2011 MER San Marino was rated LC with the former R.32. The MER noted that the review of the effectiveness of the AML/CFT system was conducted partially by the TCNC and does not cover comprehensively the overall AML/CFT system. Also, there were no statistics available on formal requests for assistance made or received by the CBSM relating to or including AML/CFT.

Criterion 33.1 - Pursuant to Art. 16 ter of the AML/CFT Law data and information have to be collected for the purpose of the NRA and of the assessment of effectiveness of the prevention and combating of ML/TF. In addition, according to paragraph 2 of Art. 10 of the AML/CFT Law the FIA collects annually data regarding the activities carried out for the prevention and combating of ML/TF. The list of statistics is contained in Art. 3 of the Technical Annex to the AML/CFT Law.

(a) STRs, received and disseminated: Pursuant to paragraph 1b) of Art. 3 of the technical annex to the AML/CFT Law data on the number of STRs made to the FIA and follow-up (disseminated) should be maintained. Based on the information provided by San Marino it can be concluded that statistical data is maintained in a comprehensive manner.

(b) ML/TF investigations, prosecutions and convictions: Paragraph 1b) of Art. 3 of the Technical Annex to the AML/CFT Law requires to keep and maintain statistics on the number of cases investigated, number of persons prosecuted and convicted for ML or TF. The SM Registrar of the Criminal Courts holds statistical data on investigations, prosecutions and convictions of ML and TF offences. These are maintained on a yearly basis. In general statistics on ML/TF investigations, prosecutions and convictions are kept and maintained in a comprehensive manner.

(c) Property frozen; seized and confiscated: Paragraph 1b) of Art. 3 of the Technical Annex to the AML/CFT Law requires to keep and maintain statistics on property frozen, seized or confiscated. San Marino maintains statistics on property frozen, seized or confiscated by ML/TF and predicate offences, which is done in a comprehensive manner.

(d) MLA or other international requests for cooperation made and received: According to paragraph 1d) of Art. 3 of the Technical Annex to the AML/CFT Law data on the number of cross-border requests for information that were made, received, refused and partially or fully answered by the Agency should be maintained. Statistical data on the MLA requests received and made are held by the Registrar of the Criminal Courts which contains information on requests for assistance received and made, the requesting and requested countries and the status of the request. This information is kept and maintained in a comprehensive manner.

Weighting and Conclusion

R. is rated C.

Recommendation 34 – Guidance and feedback

In the 2011 MER San Marino was rated largely compliant with former R. 25. Indication of the need to provide further general feedback tailored to particular types of FIs and sectoral risks. Reported need of clear terms of reference (case-specific interpretations) to implement the laws and regulations. Insufficient sector specific guidelines on sectoral ML/TF risks, techniques and methods.

Criterion 34.1 – Pursuant to Art. 4 of Law 92/2008 one of the functions of the FIA is to issue instructions, circulars and guidelines regarding the prevention and combating of ML and TF. The FIA also provides case-based and general feedback in terms of quality of reported STR's and informs the public domain by publishing case-specific interpretations in the Annual Report as well as "newsletters".

Weighting and Conclusion

R.34 is rated C.

Recommendation 35 – Sanctions

In the 2011 MER, San Marino was rated LC with former R. 17. The assessment identified a lack of consistent and system-wide application of punitive measures.

Criterion 35.1 – San Marino has a general range of sanctions available. As permanent withdrawal of a license wholly or partially is not available and the amount of pecuniary fines is low (unless in case of repeated, systemic or multiple violations, which provide an economic advantage) and do not offer any range in terms of different sectors, then sanctions available may not always be proportionate and dissuasive.

FIs and DNFBPs

Title VI of Law 92/2008 provides sanctions for violation of AML/CFT 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 AML/CFT infringements under Chapter II of title VI of the Law 92/2008.

Administrative sanctions include pecuniary sanctions 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) suspending an authorisation wholly or partially for a period of not less than six months and not more than three years, d) banning of persons discharging managerial responsibilities on a temporary basis, e) removing an AML/CFT Officer (Chapter II of Title VI of Law 92/2008). The orders to eliminate violations or refrain from repeating them may be used only in cases of rare offensiveness or danger and as an alternative to a fine.

Pecuniary administrative sanctions 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. Pecuniary sanctions for administrative violations are fixed in a range to include minimum and maximum amount, which range from €1 000 to €5 000 for minimum and €25 000 to €100 000 for maximum amount depending on the specific violation. In case of a serious, repeated, systemic or multiple violations, which provide an economic advantage, the maximum levels of the amounts of fines are raised up to twice the amount of the advantage or up to €1 million if the advantage cannot be determined. The amounts of fines available to the FIA do not offer any range in terms of the sector at hand and the application of maximum fines are limited only to situations, where the violations determine an economic advantage (Art. 67 bis (1) of AML/CFT Law) therefore reducing the proportionality and dissuasiveness of sanctions available.

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 accumulative. Criminal sanctions are applicable for violations of 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.

NPOs

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 OCA has the power to penalise the governing council with a pecuniary administrative sanction between €1,000 and €5,000 or the foundation itself with a pecuniary administrative sanction between €1 000 and €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.

TFS related to TF and terrorism

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.

Criminal sanctions apply to circumvention for freezing measures punished with third-degree imprisonment, daily fine and disqualification and a pecuniary administrative sanction 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 pecuniary administrative sanction from €10 000 to €100 000 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 pecuniary sanction shall be doubled.

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 €10 000 to €100 000. Pecuniary administrative sanction for violation of instructions or circulars is from €500 to 50 000.

Terrorism and TF itself are crimes according to Art. 340 octies and 340 decies of the CC and are punishable by sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.

Criterion 35.2 – Pursuant to Law 92/2008 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 Law 92/2008. 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 Law 92/2008 and subsequent amendments, incl. aforementioned Art. 70 when applying sanctions for failure to comply with TFS requirements.

Weighting and Conclusion

San Marino has a range of sanctions available. However, there are several moderate shortcomings. A permanent withdrawal of a license wholly or partially is not available and the amount of pecuniary fines are low and do not offer any range in terms of different sectors. As a result, the sanctions available may not always be proportionate. **R.35 is rated PC.**

Recommendation 36 – International instruments

In the 2011 MER San Marino was rated as LC for the former R.35 and PC for the former SR.I. The 2011 MER identified in relation to R.35 a few shortcomings in the implementation of the Palermo and Vienna Conventions (some physical elements of the ML offence were not explicitly covered in Art. 199bis but were clarified by case law.) The categories of offences of terrorism, TF and piracy were not fully covered as predicate offences for ML and there was no extension to cover self-laundering and the criminal liability of legal persons. In relation to SR.I the 2011 MER identified two deficiencies concerning the implementation of the TF Convention provisions.

Criterion 36.1 - San Marino is a party to the Vienna Convention (ratified in October 2001), the Palermo Convention (ratified in December 2000) and its additional protocols in June 2010, and the TF Convention (ratified in March 2002). San Marino has not yet ratified the Merida Convention.

Criterion 36.2 – San Marino has fully implemented the relevant Articles of the Vienna, Palermo, Merida and TF Conventions.

Weighting and Conclusion

San Marino has not yet ratified the Merida Convention. **R.36 is rated LC.**

Recommendation 37 - Mutual legal assistance

In the 2011 MER San Marino received LC for the former R.36 and SR.V based on the following deficiencies identified: the ML offence did not cover self-laundering potentially having a negative effect both on the execution of MLA requests and the granting of extradition, in the context of the application of the dual criminality requirement; there were some effectiveness concerns (i.e. until shortly before the visit, the procedure of double exequatur impacted on the effectiveness of execution of requests); and in TF cases, the shortcomings identified under SR.II (Criminalisation of Terrorist Financing) had a potential impact on San Marino's ability to provide MLA.

Criterion 37.1⁵³ – San Marino is able to rapidly provide the widest possible range of MLA in relation to ML, associated predicate offences and FT investigations, prosecutions and related proceedings on the basis of the international treaties, conventions⁵⁴, Law no.104 of 30 July 2019 as amended by Law n.128 of 23 July 2010 (hereafter, Law No. 104/2009) on international rogatory letters relating to criminal matters and subsidiary legislation (Articles 1 and 8 of Law No. 104/2009). MLA is also provided on the basis of the principle of reciprocity (Art. 10 of Law No. 104/2009). With respect to legal persons MLA can be provided in accordance with Law no.99 of 29 July 2013.

Art. 8 of Law no.104/2009 obliges the Law Commissioner to rapidly execute the letter rogatory and, in any case, within and not later than 60 days of receipt, by adopting the relevant order of exequatur.

Criterion 37.2 – San Marino has designated the Law Commissioner as a central authority for the transmission and execution of requests and has clear processes for the timely prioritisation and execution of MLA requests. San Marino uses a case management system called ARET, which is in use at the Criminal Registry.

The Law Commissioner is responsible for analysing whether requests are admissible and rapidly executes the letter rogatory by adopting the relevant order of exequatur. Art. 8 of Law No. 104/2009 applies.

Requests are prioritised by the Law Commissioner according to several factors such as the need for urgency, and the level of risk; the type of request; the seriousness of the crime. For example, crimes against minor or other serious crimes (e.g. FT, ML, corruption, organised crime, war crimes and crimes against humanity, etc.). Other criteria include the following: requests from countries considered higher risk, or countries which are geographically close, requests for seizure of funds, and extradition requests.

Criterion 37.3 – Sammarinese law does not provide unreasonable or unduly restrictive conditions for MLA. Only where a MLA request involves coercive action is the execution of the request subject to the dual criminality principle, so that the type of conduct for which legal assistance is sought must be also criminalised under San Marino Law. It is not a requirement for meeting a request that legal proceedings are underway or concluded for the predicate offence in the requesting State.

For requests for assistance by authorities of jurisdictions with whom San Marino has no arrangement, the granting of judicial assistance is made conditional on reciprocity.

The only limitations for execution of MLA are set out in Art. 8 paragraph 3, of Law No. 104/2009.

⁵³ Paragraphs still relevant from the previous MER 2011:1091-1092-1096-1097-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1119-1120 -1121 -1122-1123-1124-1125- 1127-1129- 1131-1132- 1153.

⁵⁴ San Marino is party of several multilateral conventions. Other than the relevant treaties which, *inter alia*, concern ML and TF, San Marino also ratified: (i) the European Convention on Mutual Assistance in Criminal Matters; (ii) the European Convention on Extradition; (iii) the European Convention on the International Validity of Criminal Judgments; and (iv) the Convention on the Transfer of Sentenced Persons.

Criterion 37.4 – The Sammarinese law does not provide for grounds to refuse to execute a request for legal assistance in view of the fact that it involves fiscal matters or on the grounds of secrecy and confidentiality requirements of FIs or DNFBPs, except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies.

In particular, Law No. 5 of 21 January 2010 provides *inter alia* that banking secrecy in criminal cases cannot be invoked against the Law Commissioner or other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international agreements in force. The production of all information and documents held by banking or FIs may be compelled under the framework of a rogatory commission. In addition, Art. 37 of Law No. 104/2009 specifies that under Art. 36, paragraph 5 of Law No. 165/2005 bank secrecy cannot be invoked at the hearing.

Professional secrecy also cannot be invoked against the JA because Art. 38 of the AML/CFT Law expressly establishes that official and professional secrecy shall not be invoked against the JA, the Agency and the Police Authority in the exercise of their functions, except for information that lawyers and accountants acquire while defending and representing their client during judicial proceedings or in relation to such proceedings. The provision applies both to domestic proceedings and proceedings involving a letter rogatory, since Art. 13, para 1 of Law No. 104/2009 establishes that the judge shall carry out the requested acts according to the modalities set forth in national legislation. The authorities confirm that in practice, professional privilege or secrecy has never been invoked in any domestic proceedings or proceedings initiated after the receipt of a letter rogatory.

As noted under C.37.3, Art. 8, para. 3, of Law No. 104/2009 states that the only limitations for the execution are in the following scenarios: where the acts requested are contrary to the principles enshrined in the Declaration of Citizens' Rights and Fundamental Principles of the San Marino constitutional order; where the acts requested are expressly prohibited by law; where the acts requested prejudice the sovereignty, security or other essential interests of the Republic of San Marino; etc).

Criterion 37.5 - San Marino maintains the confidentiality of MLA requests that they receive and the information contained in them, in order to protect the integrity of the investigation or inquiry.

According to Art. 17 of Law No. 104/2009, the requesting State may demand that the Republic of San Marino keeps the facts to which the request refers confidential. If the execution of the request entails under San Marino law the adoption of procedural guarantees that are not consistent with the confidentiality requested, the Law Commissioner shall immediately inform the requesting State thereof. In addition, if a criminal file is opened in the Republic of San Marino further to the confidential transmission, the provisions of Art. 5 paragraphs 1 and 2 of Law No. 93 of 17 June 2008, concerning the application of the provisional secrecy regime, shall be applied for the sole purposes of international cooperation and for the period of three months.

The Code of Criminal Procedure (CCP) provides that after registering the notice of offence, the Judge shall initiate the criminal investigation and inform the investigated person of the pending proceedings within a month from the registration of the notice. Such notification can be postponed, for investigative purposes, up to nine months from the registration, by ordering that the documents remain secret. The regime of provisional secrecy covering the criminal investigation stage shall be also extended to the period necessary to execute letters rogatory issued.

Criterion 37.6 - Where MLA requests do not involve coercive actions, under Sammarinese domestic law, dual criminality is not a condition for rendering assistance (i.e. notification of acts etc.).

Criterion 37.7 – The requirement of dual criminality is not applied strictly and offences are interpreted in a wide manner. The offence being prosecuted abroad must contain the objective elements of an offence under Sammarinese law but it is not necessary for San Marino and the requesting country to classify the offence in the same category of offences, nor is it necessary for them to use the same term for that offence.

Criterion 37.8 – All procedural actions and all investigative techniques that may be undertaken in a domestic investigation and are available under domestic law are also available, with no limitations, for the purpose of MLA and in response to a direct request to domestic counterparts from foreign judicial or law enforcement authorities.

The legal assistance may include requests for identification, seizure and confiscation of property, assets and proceeds obtained from ML; the production, search and seizure of information, documents, and evidence in general from banking or FIs, or other natural or legal persons, even if not involved in the offence; interviews and taking of testimony; the obtaining of documents relevant to the offence; the servicing of judicial acts also to “encourage” people in possession of relevant information for the requesting State to show up spontaneously (to this end the San Marino judge may impose penalties on a witness unreasonably refusing to appear or provide testimony); identification, seizure and confiscation of property or proceeds laundered or intended to be laundered.

Weighting and Conclusion

R.37 is rated C.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In the 2011 MER San Marino received LC for the former R.38 due to two deficiencies related to requests for confiscation of laundered property and proceeds (not only instrumentalities) and no consideration being given for establishing an asset forfeiture fund.

Criterion 38.1 - San Marino has the authority to act expeditiously in response to requests from foreign countries to identify, freeze, seize, or confiscate: (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, ML, predicate offences, or FT; or (e) property of corresponding value.

Identification: Cooperation in asset recovery in the field of tracing and identifying proceeds from or other property related to crime is regulated by Decree-Law No. 21 of 27 February 2014, which states that for the purposes of the facilitation of tracing and identifying the proceeds of crime and other crime related property, the NCB Interpol performs the functions of ARO in the Republic of San Marino.

Freezing, seizure and confiscation: The measures provided for in the relevant legislation and described under R.4 and R.37 (Art. 58 *bis* and Art. 58 *ter* of the CCP; Art.145 of the CC; Art. 147 paragraphs 1 and 8 of the CC) are equally available upon the request of a foreign country; these are measures that can be taken to identify, trace, freeze, seize or confiscate property. San Marino provides MLA with regard to confiscation and provisional measures on the basis of international agreements or, should no such agreement be in place, on the basis of domestic legislation. There is no need for local authorities to start an investigation to give effect to a foreign request for attachment, freezing or confiscation. Preventive measures applied under the CPC are issued on an *ex parte* basis and are not subject to time limitations of any kind. Seizures are affected by an order from the Judge and an analogous kind of order is also necessary to lift such measures.

Criterion 38.2 - San Marino can provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures (for example in case of mental illness, death, statute of limitations), if the responsibility of the perpetrator has been ascertained regardless of a conviction. In general, property can be confiscated even if the perpetrator of the offence cannot be identified, is deceased or is not responsible for their actions.

According to paragraph 7 of Art. 75 of AML/CFT Law the judge shall upon request of the interested party give effect to the foreign measure which, in the framework of non-criminal proceedings is

aimed at confiscating the property, funds or resources envisaged in paragraph 1 of the Law, identifies the same property, funds or resources and orders precautionary measures for their preservation. The judge shall verify the authenticity and enforceability of the foreign measure and that its implementation is not contrary to public order. The requested acts shall not prejudice the Republic's sovereignty, security and other essential interests. As for all aspects not covered, the procedural rules concerning civil judgements shall apply.

Criterion 38.3 –

(a) San Marino has arrangements to ensure swift coordination with other countries to in respect of seizure and confiscation. Law No. 104/2009 allows the participation at the execution of the letters rogatory of the requesting State which expressly asks for it (Art. 16). The Law Commissioner may authorise the requesting Authority to be present.

(b) San Marino has mechanisms for managing, and when necessary disposing of, frozen, seized or confiscated property (Chapter III: Provisions in confiscated assets and Art. 15 of Law no.100 of the 29 July 2013). When the JA deals with cases concerning the management and disposal of frozen, seized or confiscated property, the Judge may appoint an expert entrusted with the assessment, disposal or sale of non-monetary movable assets or the management of sums of money, if needed.

Criterion 38.4 – San Marino is able to share confiscated assets with other countries on the basis of international conventions or arrangements with other countries. In the absence of any applicable international agreement or treaty stipulating otherwise, Art. 15 of Law No. 100/2013 provides that goods, funds and assets confiscated on the basis of a request for judicial assistance shall be transferred to the requested State if their value is less than €10 000. If the value exceeds this amount, half of the excess value shall be transferred to the requesting State. Such an allocation measure may be derogated, in whole or in part, by agreements subsequent to the execution of the request for judicial assistance, taking into consideration the type of offence, and the participation of each State in the investigative activity.

Weighting and Conclusion

R.38 is rated C.

Recommendation 39 – Extradition

In the 2011 MER San Marino was rated LC for the former R.39 based on the following deficiencies: the ML offence did not cover self-laundering which potentially had a negative effect on the granting of extradition requests, given the application of a dual criminality requirement; San Marino had in limited circumstances opportunity to refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; and the effectiveness was not assessed given the limited number of extradition requests received.

Criterion 39.1

San Marino is able to extradite on the basis of a solid legal foundation. Since the end of 1800 San Marino has began making bilateral agreements⁵⁵ with several European Countries and, in 1906, with the United States.

⁵⁵ Agreements on extradition have been concluded with Great Britain in 1899, with the Netherlands in 1902, with Belgium in 1903 and with France in 1954. San Marino concluded in 1939 with Italy the Convention on Friendship and Good Neighbourliness, which regulates extradition between the two States. So far as extradition is concerned, all these bilateral agreements have been superseded by the ratification of the European Convention on Extradition, concluded in 1957 (Conciliar Decree no. 28 of 16 March 2009). The

(a) Art. 2 of the European Convention provides that all the facts punishable with imprisonment of at least twelve months are extraditable. Both ML and TF are extraditable: money-laundering is punishable with imprisonment from four to ten years (Art. 199 bis of the CC) and terrorism financing is punishable with imprisonment from ten to twenty years (Art. 337 bis of the CC.) The conditions and procedures for granting extradition may be found in Law n. 41 of 31st March 2014 (Extradition Provisions). Art. 1, Paragraph 2 of Law n. 41 of 31 March 2014, only applies if the international conventions ratified by San Marino do not set out specific provisions for governing extradition. In all other cases international conventions shall prevail;

(b) San Marino has adopted specific legal provisions (Articles 6 to. 15 of Law n. 41 of 31 March 2014) setting out, in a detailed and clear manner, how extradition requests have to be processed by the competent authorities (Minister of Justice and Judiciary). At the same time, these provisions ensure that there is a timely and efficient system for executing extradition requests. The case management system available for extradition is the software used by the Criminal Registry;

(c) The conditions for granting extradition are now set out in Art. 19 of Law No. 41/2014. The limitations set forth in Art. 4 paragraphs 1 and 2 of the Law on Extradition (and Art. 3 paragraphs 1 and 2 of the European Convention on Extradition), are clearly justified by the need to protect the fundamental rights of the person sought (no extradition for political offences, no extradition if there are grounds to believe that there will be prosecution or discrimination on the basis of race, religion, gender, nationality, language, political opinions, personal or social status, or that the person to be extradited will be subjected to cruel, inhuman or degrading treatment or punishment, or other violations of the fundamental rights of the individual).

Criterion 39.2 -

(a) According to the Law on Extradition (Art. 4 paragraph 5), although San Marino has expressed reservations with Art. 6 of the European Convention on Extradition (see paragraph 1 of Art. 6) it is affirmed that in no case may extradition be denied merely on the basis of nationality if the offence in relation to which the extradition is requested is a terrorist offence or an offence committed for the purpose of terrorism (Art. 4 paragraph 5 of Law No. 41/2014 in conjunction with paragraph 3 of the same article).

(b) In case of an extradition refusal because of the Sammarinese nationality of the person sought, the JA shall start criminal proceedings for the same facts for which extradition has been refused at the mere request of the State seeking the extradition (Art. 4 paragraph 6 of Law No. 41/2014, which implements paragraph 2 of Art. 6 of the European Convention on Extradition). The requesting State shall also be informed of the start of such proceedings.

Criterion 39.3 - San Marino has implemented the principle of dual criminality according to Art. 3 of the Law No. 41/2014. This principle requires merely and generally that the conduct qualify as a criminal offence according to the laws of both the requesting and requested State. No other formal requirements (the same qualification of the offence, the use of the same terminology, the placement of the offence in the same criminal category) have to apply for the condition of dual criminality to be satisfied.

Criterion 39.4 - San Marino has simplified extradition mechanisms in place. Although San Marino follows specific procedures for granting extradition in order ensure legal safeguards, simplified procedures have been introduced. According to Art. 7 paragraph 2 of the Law No. 41/2014 *"if the person sought, in the presence of his counsel, consents to be extradited, the decision of the Judge of Appeal shall be limited to the validation of the consent"*.

Convention regulates comprehensively all the matters concerning extradition which may arise between the States, thereby prevailing over any bilateral agreement concluded among them (see art. 28 of the Convention).

A simplified procedure is also in place in case of request of extradition extension by the State that has already granted extradition for other facts. Since the interested person shall make statements in front of the judge of the requesting State and since these statements will accompany the request of extension, the Judge of Appeal of the requested State shall proceed without the presence of the interested person (Art. 7 paragraph 10 of the Law No. 41/2014). In addition, in the case that the interested person has accepted the request of extension through the above-mentioned statement, no trial shall take place (the same procedure is in place in case of request of consent for the re-extradition to a different State). In all these cases the interested person by formally expressing his/her consent waive formal extradition proceedings.

Weighting and Conclusion

R.39 is rated C.

Recommendation 40 – Other forms of international cooperation

R.40 was rated PC in the 2011 MER due to the following deficiencies: the basis for co-operation between the FIA and foreign supervisory authorities which are not financial intelligence units is not clearly established in the legislation and the scope of information appears to be limited to information related to FIU investigations. The legal framework in place does not clearly authorise the CBSM to spontaneously exchange information. The adequacy of co-operation mechanisms and the effectiveness of the cooperation with foreign authorities was not demonstrated by the CBSM and the Police forces.

Criterion 40.1

FIU

The FIA can rapidly provide the widest range of international cooperation both spontaneously and upon request in relation to ML, associated predicate offences and TF (paragraphs 1 and 8 of Art. 16 of AML/CFT Law, section 2 of the Operational guide for exchange of information by the FIA with its foreign counterparts).

Law enforcement

The NCB Interpol provides for the widest range of international cooperation in relation to ML/TF and associated predicate offences (Art. 2 (c) of the Law on the tasks and functions of the NCB). There is no limitation to providing information upon request or spontaneously. San Marino relies on the rules of the “Standards Quality” of INTERPOL which require to indicate a degree of and reason for urgency of the request, i.e. meaning that the international cooperation is provided in a rapid manner.

Supervisory authorities

The Central Bank of the Republic of San Marino (CBSM) is empowered to provide the widest range of international cooperation to competent foreign authorities spontaneously and upon request (paragraph 1 of Art. 103 of the LIFS). The CBSM internal procedures, organisational structure and allocated resources ensure that international cooperation is provided rapidly.

Criterion 40.2

- (a) See criterion 40.1.
- (b) There are no legal limitations that would prevent the FIA, the NCB and the CBSM from using the most efficient means to co-operate with their foreign counterparts.

FIU

The FIA is required to use secure and protected channels of communication for the exchange of information (paragraph 3 of Art. 16 of the AML/CFT Law, Section on Channels for information

exchange of the High-Level Principles and Policies governing the FIA Activities related to the international exchange of information). The FIA also uses the Egmont Group's secure communication channel to exchange information with foreign counterparts.

Law enforcement

The NCB uses the Interpol secure channel for communication and police liaison officers (Art. 2 (f) of the Law on the tasks and functions of the NCB).

Supervisory authorities

There is no clear and secure gateway, mechanism or channel for the CBSM to facilitate and allow for the transmission and execution of requests.

(c)

FIU

The FIA has processes in place for the prioritisation and timely execution of requests (Section on "When the FIA receives requests from foreign FIUs of the High-Level Principles and Policies governing the FIA Activities related to the international exchange of information").

Law enforcement

The NCB Interpol of San Marino uses the operational rules of the "Standards Quality" of Interpol to have a clear process for the prioritisation and timely execution of requests .

Supervisory authorities

There are no clear processes for the prioritisation and timely execution of requests for the CBSM.

(d)

FIU

See c.29.6(a). In addition, the High-Level Principles and Policies governing the FIA Activities related to the international exchange of information provide for clear process for safeguarding the information received (Sections on Use of information and clearance processes).

Law enforcement

The NCB has clear processes for safeguarding the information received (Art. 4 of the Law on the tasks and functions of the NCB).

Supervisory authorities

The CBSM has clear processes for safeguarding the information received (Paragraph 1 of Art. 29 of Law No. 96/2005).

Criterion 40.3

FIU

The FIA can provide international cooperation on the basis of reciprocity (paragraph 1 of Art. 16 of the AML/CFT Law). At the same time the FIA is empowered to conclude appropriate MoUs if needed (paragraph 6 of Art. 16 of the AML/CFT Law).

Law enforcement

LEAs cooperate with their foreign counterparts on the basis of specific cooperation agreements and through the NCB Interpol (paragraph 7 of Art. 12 of the AML/CFT Law). There is no requirement that LEAs should sign MoUs in a timely manner.

Supervisory authorities

The Central Bank of the Republic of San Marino can provide international cooperation to competent foreign authorities on the basis of reciprocity (paragraph 1 of Art. 103 of the LIFS). The CBSM is empowered to conclude cooperation agreements (paragraph 3 of Art. 103 of the LIFS).

Criterion 40.4

FIU

The FIA as a member of the Egmont Group in accordance with clause 19 of the Egmont Principles for Information Exchange between FIUs is required to provide feedback to its foreign counterparts.

Law enforcement and supervisory authorities

There is no legal prohibition that would prevent the LEAs and the CBSM to provide feedback in a timely manner on the use and usefulness of the information received upon request from their counterparts.

Criterion 40.5

(a) The FIU, law enforcement and supervisory authorities: there are no grounds for refusing the execution of a request for assistance involving fiscal matters.

(b) Financial and professional secrets do not inhibit the exchange of information (See R.9).

(c) The : there are no limitations to the exchange of information by the FIA when there is an inquiry, investigation or proceeding underway in San Marino. LEAs: the existence of an opened criminal proceeding limits the granting of international cooperation to the requesting country. CBSM: the simple existence of open proceedings does not prevent CBSM from providing international cooperation since.

(d) The FIU, law enforcement and supervisory authorities: there are no limitations with respect to the nature or status of its counterparts (paragraph 1 of Art. 16 of the AML/CFT Law).

Criterion 40.6

FIU

Paragraphs 4 and 5 of Art. 16 of the AML/CFT Law ensure that information exchanged by the FIA is used only for the requested purpose and not disseminated to any third party unless the authorisation is given.

Law enforcement

The LEAs is required to use information received only for the purpose requested and not to disseminate to any third party unless the authorisation is given (paragraph 2 of Art. 14 (Confidentiality) of the INTERPOL'S Rules on the Processing of Data).

Supervisory authorities

The Central Bank of the Republic of San Marino is required not to disseminate or communicate to third parties without the explicit written consent of the disclosing authority (paragraph 5b) of Art. 103 of the LIFS). The requirement to use the information exchanged for the purpose requested is set out by Art. 5(a) of the LIFS.

Criterion 40.7

FIU

The information exchanged with foreign FIUs should be covered by official secrecy (paragraph 4 of Art. 16 of the AML/CFT Law). Also, the FIA is required to implement measures ensuring that data and information could not be accessed by third parties through the use of computer tools (paragraph 2 of Art. 9 of the AML/CFT Law). Foreign FIUs shall guarantee the same conditions of confidentiality of information ensured by the FIA (paragraph 5 of Art. 16 of the AML/CFT Law).

Law enforcement

The LEAs protect the exchanged information in the same manner as they would protect similar information received from domestic authorities.

Supervisory authorities

The CBSM is obliged to protect the information received from foreign counterparts (paragraph 1 of Art. 29 of Law No. 96/2005). Paragraph 2 of Art. 103 of the LIFS provide that competent foreign authorities must guarantee confidentiality in the treatment of the exchanged information.

Criterion 40.8

FIU

The FIA is able to exchange with foreign counterparts all information it can obtain at the national level through access to different databases and requests sent to OEs (paragraph 8 of Art. 16 of the AML/CFT Law).

Law enforcement

The NCB is able to exchange with foreign counterparts all information it can obtain at the national level through access to different databases or inquiries.

Supervisory authorities

The CBSM is able to exchange with foreign counterparts all information it can obtain at the national level through carrying out all verification activities within the scope of its powers in order to be able to find the requested information or verifying data underlying the request for international cooperation on behalf of the requesting authorities (Art. 41, 42 and 103 of Law no.165 of 17 November 2005).

Exchange of Information between FIUs

Criterion 40.9 See criteria 40.1 and 40.5(d).

Criterion 40.10 The FIA as a member of the Egmont Group in accordance with clause 19 of the Egmont Principles for Information Exchange between FIUs is required to provide feedback to its foreign counterparts.

Criterion 40.11 According to paragraphs 1 and 8 of Art. 16 of the AML/CFT Law the FIA can exchange with foreign counterparts all obtainable information domestically on the basis of reciprocity.

Exchange of Information between financial supervisors

Criterion 40.12 - The legal basis for the FIA to co-operate with its foreign counterparts, in particular with respect to the exchange of supervisory information related to or relevant for AML/CFT purposes is provided for in Articles 4(1) and 16 of the AML/CFT. The nature or status of foreign authorities for co-operation is not limited. The CBSM is authorised to co-operate with foreign authorities pursuant to Art. 103 of the LIFS.

Criterion 40.13 - Co-operation described in TC 40.12 entails the exchange of information domestically available to FIA or CBSM.

Criterion 40.14 - The FIA and CBSM may exchange all information domestically available to them, under Art. 16 of AML/CFT Law and Art. 103 of the LIFS respectively.

Criterion 40.15 - The FIA is able to exchange with foreign counterparts all information it can obtain at the national level, however, the FIU is not able to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country.

The CBSM is able to exchange with foreign counterparts all information it can obtain at the national level (see c.40.8).

Pursuant to paragraph 4 of Art. 103 of the LIFS the CBSM may conclude co-operation agreements with the competent authorities of foreign jurisdictions which include the possibility of acquiring information and documents also directly from the supervised entities by the corresponding authorities supervising the foreign parent company.

Criterion 40.16 - The requirement for the FIA to ensure having a prior authorisation of the requested supervisory authority is established under Art. 16 of the AML/CFT Law.

Pursuant to Art. 103 (5)(b) of the LIFS the exchanged information by the CBSM may not be disseminated without the explicit written consent of the competent authorities that have disclosed them.

Exchange of Information between law enforcement authorities

Criterion 40.17 - LEAs are able to exchange with foreign counterparts all the information that is obtainable through the inquiries carried out in the national databases (See also c.40.1). On identification and tracing of proceeds of crimes the Decree-Law n. 21 of 27 February 2014 provides for the NCB with necessary powers. The NCB also serves as a national ARO.

Criterion 40.18 - There is no direct possibility for the LEAs to conduct inquiries on behalf of its foreign counterparts. Nevertheless, the NCB is able to exchange with foreign counterparts all information it can obtain using investigative techniques available in accordance with the domestic law.

Criterion 40.19 - According to Art. 2, paragraph 3-4-5 “Areas of Cooperation” of the “Technical Arrangement between Italy and San Marino for the strengthening of police cooperation in Transnational Organized Crime” signed 20/12/2013, the parties can build a joint working group which operates in joint investigations in order to investigate and counter the crimes. Moreover, there are no legal restriction to conduct joint investigations with foreign counterparts.

Exchange of Information between non-counterparts

Criterion 40.20 - There are no legal provisions inhibiting the indirect exchange of information with non-counterparts.

Weighting and Conclusion

San Marino is largely in line with the requirements of R.40 but, there are some minor deficiencies which have a negative impact on the rating, in particular there is no clear and secure gateway, mechanism or channel for the CBSM to facilitate and allow for the transmission and execution of requests nor are there clear processes for the prioritisation and timely execution of requests. The LEAs are not required to sign MoUs in a timely manner. **R.40 is rated LC.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> San Marino has not identified nor assessed ML vulnerabilities associated with legal persons nor TF threats and vulnerabilities (c.1.1). No assessment of the VASPs sector has been conducted (c.1.1). There is no assessment of ML or TF risks related to electronic money and low-risk financial activities (c.1.6). There is no requirement for DNFBPs to assure that in case the self-assessment identifies lower risks this is consistent with the ML/TF NRAs (c.1.8).
2. National cooperation and coordination	C	
3. Money laundering offences	LC	<ul style="list-style-type: none"> For relatively large companies the provided fines are not sufficient to be proportionate or dissuasive (c.3.10).
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> C.3.10 deficiencies apply also to c..5.7.
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> The existing guidance for DNFBPs is too general and doesn't provide for a clear description to the OEs of their freezing obligations (c.6.5).
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> The existing guidance for DNFBPs is too general and doesn't provide for a clear description to the OEs of their freezing obligations (c.7.2).
8. Non-profit organisations	LC	<ul style="list-style-type: none"> The document on possible threats posed by terrorist entities to the NPOs only contains some basic information (c.8.1(b)). It is not clear, if the investigative expertise and capability of the police corps also applies to cases involving associations (c.8.5(b)).
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> Art. 36 LISF does not include the police among the parties against which banking secrecy cannot be evoked, if the police is not acting under the direction of the Law Commissioner (c.9.1a)). There is no legal obligation of sharing the customer information by the third party (c.9.1 c)).
10. Customer due diligence	LC	<ul style="list-style-type: none"> There is no explicit requirement to file an STR in case of reasonable belief of being tipped-off (c.10.20).
11. Record keeping	C	
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	LC	<ul style="list-style-type: none"> The provision of MVTs in San Marino without a licence is prohibited, but there is no specific obligation for the San Marino authorities to identify natural or legal persons that engage in MVTs without license or authorisation (c.14.2). There are no specific requirements for MVTs providers to include agents their AML/CFT programmes and monitor them for compliance with these programmes (c.14.15).
15. New technologies	PC	<ul style="list-style-type: none"> To date no assessment of the VASPs sector has been conducted to identify and assess the ML/TF risks emerging from VA activities and the activities or operations of VASPs (apart from the description of current regulation and cooperation mechanisms provided in the 2019 NRA) (c.15.3 (a)). Due to the absence of an in-depth assessment of the VASPs sector to identify and assess the ML/TF risks emerging from VA activities and the activities or

Recommendations	Rating	Factor(s) underlying the rating
		<p>operations of VASPs, the AT may not confirm application of RBA fully in line with FATF recommendations (c.15.3(b)).</p> <ul style="list-style-type: none"> The research to identify unregistered VASPs was limited to review of all registered companies only. No information was presented on any activities related to identification of unregistered entities (both legal and natural). Moreover, apart from the regulations specified above, no specific sanctions are in place in relation to applying sanctions against unregistered/ unlicensed operations of VASPs (c.15.5). Deficiencies in relation to implementation of R. 6 and R.7 apply (c.15.10). Deficiencies identified under R.35 in relation to the absence of the proportionate sanctions apply (c.15.8).
16. Wire transfers	C	
17. Reliance on third parties	LC	<ul style="list-style-type: none"> While the Law prohibits reliance on third parties from non-reputable jurisdictions, it is not equivalent to the obligation to have regard to information on the level of country risk (c.17.2)
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> A deficient in relation to c 18(1) exists as there is there is no explicit requirement to appoint a compliance officer at the management level. For c.18(2) financial groups are required to implement group-wide policies and procedures but there is no explicit requirement to include measures set out in c.18.1. For c18(2)(a) and (b) do not extent to entities of financial group if they are located abroad.
19. Higher-risk countries	C	
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> The deficiencies identified in relation to FIs under R.17 are also relevant for DNFBPs (c.22.5).
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> The deficiencies identified in relation to FIs under R.18 are also relevant for DNFBPs (c.23.2).
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> There is no fully-fledged ML/TF risk analysis of legal persons, which should present the threats and vulnerabilities of each type of legal person in a systematic manner based on quantitative and qualitative data eventually leading to a conclusion of the final risk (residual risk after having applied existing risk mitigating measures) and subsequently proposing additional risk mitigating measures to be applied in the future in order to decrease the risk to an acceptable level. There are also no risk categories assigned to all types of legal persons. There is no assessment of fiduciary companies and no analysis of the different risk levels of fiduciary companies ante LISF and fiduciary companies post LISF (c.24.2) The shareholder register shall be kept in the registered office of a company for its entire existence, but may also be deposited to a lawyer, a notary or accountant in San Marino (Art. 72 (5)), but there is no obligation to notify the Register of Companies of the location of this deposit (c.24.4) There is no legal provision to communicate changes of the personal details of legal representatives on a timely basis to Court Registry on foundations (c.24.5). The sanctions are not proportionate and dissuasive. In particular, the sanction of €500 for failure to provide basic information on companies is considered too low, given that the vast majority of legal persons are companies under the Company Law (c.24.13). There are no formal processes to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information (c.24.15).
25. Transparency and beneficial ownership of legal arrangements	LC	<ul style="list-style-type: none"> Non-professional trusts are not considered OEs and thus not covered by the FIU powers according to Art. 5 of the AML/CFT Law (c.25.4).

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There are no sanctions for NPTs for the failure to hold basic information on professional service providers and delegates and for failure to keep this information updated (c.25.2 and c.25.7).
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> There are deficiencies in relation to market entry controls. Even if checked it is not clear if potential association with criminals in itself would be legal ground to decline authorisation of FIs (c.26.3). From the provided information the AT could not conclude on compliance with relevant Basel Core Principles, IOSCO and IAIS Principles (c.26.4(a)). There are no clear obligations to perform consolidated group-wide supervisory activity or to perform group-wide ML/TF risk assessments (c.26.5 and c.26.6).
27. Powers of supervisors	LC	<ul style="list-style-type: none"> Deficiencies identified under R.35 apply also to c.27.4.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> There are no procedures for lawyers and notaries or the OEA to check for association with criminals or to define the association with criminals outside of (pending) criminal charges in a unified manner. Even if association with criminals would be identified through adverse media or other types of <i>ad hoc</i> checks, no provision exists to decline persons from being professionally accredited, or to hold (or to be the beneficial owner of) a significant or controlling interest, or to hold a management function in a DNFBP on this basis alone (c.28.4 b). The range of sanctions available, is not proportionate as there are shortcomings in the range of fines and administrative measures as described in R.35 (c.28.4 c).
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	C	
32. Cash couriers	C	
33. Statistics	C	
34. Guidance and feedback	C	
35. Sanctions	PC	<ul style="list-style-type: none"> A permanent withdrawal of a license wholly or partially is not available and the amount of pecuniary fines are low and do not offer any range in terms of different sectors. As a result, the sanctions available may not always be proportionate (c.35.1).
36. International instruments	LC	<ul style="list-style-type: none"> San Marino has not yet ratified the Merida Convention (c.36.1).
37. Mutual legal assistance	C	
38. Mutual legal assistance: freezing and confiscation	C	
39. Extradition	C	
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> There is no clear and secure gateway, mechanism or channel for the CBSM to facilitate and allow for the transmission and execution of requests (c.40.2 (c)). There are no clear processes for the prioritisation and timely execution of requests for the CBSM (c.40.2(d)). There is no requirement that LEAs should sign MoUs in a timely manner (c.40.3). The FIU is not able to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country (c.40.15).

Glossary of Acronyms

AML	Anti-money laundering
AML/CFT Law	Law No. 92 of 17 June 2008 on the Prevention and combating of money laundering and terrorist financing
ARO	Asset Recovery Office
Art.	Article
BNI	Bearer-negotiable instrument
BO	Beneficial owner
CBSM	Central Bank of San Marino
CC	Criminal Code
CCP	Code of Criminal Procedure
CDD	Customer due diligence
CFT	Combating the financing of terrorism
CLO	Central Liaison Office
COET	Network of the Council of Europe
Congress of State	Government of San Marino
CPC	Criminal Procedure Code
CRM	Committee for Restrictive Measures
CRS	Common reporting standard
CSC	Credit and Savings Committee
CT	Counter terrorism
DD	Delegated Decree
DNFBPs	Designated non-financial businesses and professions
DPMS	Dealers in precious metals and stones
DTC	Double Tax Convention
ECDD	Enhanced customer due diligence
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FFC	Financial and fiduciary company
FI	Financial institution
FIA	Financial Intelligence Agency of San Marino
GDP	Gross domestic product
GRECO	Group of States against Corruption
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principle
ILOR	International letter of request
IO	Immediate Outcome
IOSCO	International Organisation of Securities Commissions
JA	Judicial Authority
Law no. 57	Law No. 57 of 29 March 2019 on Measures for preventing, combating and suppressing TF, PF and the activities of countries that threaten international peace and security
LEA(s)	Law enforcement agency/agencies
LISF	Law on Companies and Banking, Financial and Insurance Service
MAAC	Convention on Mutual Administrative Assistance in Tax Matters
R.	Recommendation
MER	Mutual Evaluation Report

MFA	Ministry of Foreign and Political Affairs
ML	Money laundering
MLA	Mutual legal assistance
MVTS	Money or value transfer services
NCB Interpol	National Central Bureau of Interpol
NPO	Non-profit organisation
NPT(s)	Non-professional trustee(s)
NRA	National Risk Assessment
OCA/UAC	Office for Control Activities
OCSEA	Office for Control and Supervision over Economic Activities
OE	Obligated entity
OEA	Office for Economic Activities
OECD	Organisation for Economic Co-operation and Development
PEP	Politically exposed person
PF	Proliferation financing
PSP	Payment service provider
PT(s)	Professional trustee(s)
RBA	Risk-based approach
RBS	Risk-based supervision
RBSM	Risk-based supervision model
RE	Reporting entity
REAs	Real estate agents
REGTET	Register of Beneficial Owners of Trusts
SCDD	Simplified customer due diligence
SNC	Partnerships (<i>Società in nome collettivo</i>)
SPA	Joint-stock company
SRL	Limited liability company
STR	Suspicious transaction report
TC	Technical compliance
TCNC	Technical Commission of National Coordination
TCSP	Trust and Company Service Provider
TF	Terrorist financing
TFS	Targeted financial sanctions
TIEA	Tax Information Exchange Agreement
UN	United Nations
UNSCR(s)	United Nations Security Council Resolution(s)
VA(s)	Virtual asset(s)
VASP(s)	Virtual assets services provider(s)
VAT	Value-added tax
VTC	Voluntary tax compliance
WCS	World Country Survey

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Anti-money laundering and counter-terrorism financing measures

San Marino

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in San Marino as at the date of the on-site visit (28 September to 9 October 2021). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the San Marino's AML/CFT system, and provides recommendations on how the system could be strengthened.