



# **SECOND NATIONAL RISK ASSESSMENT OF MONEY LAUNDERING and TERRORISM FINANCING**

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**Public Report – Republic of San Marino - 2019**

**FINANCE AND BUDGET DEPARTMENT**

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## DISCLAIMER

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"The National Money Laundering and Terrorist Financing (ML/TF) Risk Assessment of the Republic of San Marino has been conducted as a self-assessment by Sammarinese authorities, using the National ML/TF Risk Assessment Tool that has been developed and provided by the World Bank in 2015. The World Bank team's role was limited to delivery of the tool: providing guidance on technical aspects and review/feedback to assist with the accurate use of the tool with reference to 2015 NRA. Data, statistics, and information used for completing the National Money Laundering and Terrorist Financing Risk Assessment Tool templates, as well as findings, interpretation, and judgment under the scope of National ML/TF Risk Assessment process completely belong to the Republic of San Marino authorities and do not reflect the views of the World Bank."

# ACRONYMS

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AIA	Archivio informatico Antiriciclaggio
AMAI	Association of Real Estate Agents and Intermediaries
AML	Anti-money laundering
AML/CFT Law	Law 17 June 2008 n.92, as amended ( <a href="http://www.aif.sm/site/en/home/documento50026044.html">http://www.aif.sm/site/en/home/documento50026044.html</a> )
ARO	Asset Recovery Office
BEs	Blockchain Entities
BEPS	Base Erosion and Profit Shifting
BOs	Beneficial Owner
CBSM	Central Bank of the Republic of San Marino
CFT	Counter-terrorist financing
CDD	Customer Due Diligence
CLO	Central Liaison Office
CSC (CCR)	Credit and Savings Committee
CRM	Committee for Restrictive Measures
CRS	Common Reporting Standard
CSPs	Company Service Providers
DD	Delegated Decree
DLT	Distributed ledger technologies
DNFBPS	Designated Non-Financial Businesses and Professions
DPMSs	Dealers in Precious Metals and Stones
DTC	Double Tax Convention
ECDD	Enhanced Customer Due Diligence
ECOFIN	Economic and Financial Affairs Council
EOI	Exchange of information
EOIR	Exchange of information on request
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF (GAFI)	Financial Action Task Force
FFC	Financial Fiduciary Company
FI	Financial Institution
FIA	Financial Intelligence Unit (i.e. San Marino FIU)
FIU	Financial Intelligence Unit
FTFs	Foreign Terrorist Fighters
GDP	Gross Domestic Product
HNWI	High-Net-Worth Individual
IMF	International Monetary Fund
JA	Judicial Authority
LEAs	Law Enforcement Authorities (i.e. Civil Police, Gerdarmerie and Fortress Guard)
LISF	Law of 17 November 2005 no. 165 ( <a href="http://www.bcsn.sm/site/en/home/laws-and-regulations/laws-and-decrees/documento60990.html">http://www.bcsn.sm/site/en/home/laws-and-regulations/laws-and-decrees/documento60990.html</a> )
MAAC	Multilateral Convention
MC	Management Company
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NCTS	New Community Transit System
NFPs	Non-Financial Parties



NPO	No Profit Organisation
NRA	National Risk Assessment
OCA	Office for Control Activities
OCSEA (UCVAE)	Office for Control and Supervision over Economic Activities
OEA	Office for Economic Activities
OECD	Organisation for Economic Co-operation and Development
PEP	Politically Exposed Person
PF	Proliferation Financing
REPE	Register of notarial deeds
SEPA	Single Euro Payment Area
SM	San Marino
STR	Suspicious Transaction Report
SNRA	Supranational Risk Assessment
SPA	Joint-stock companies
SRL	Limited liability company
T	Terrorism
TCNC (CTCN)	Technical Commission of National Coordination
TCSPs	Trust and Company Service Providers
TIEAs	Tax Information Exchange Agreements
TF	Terrorist Financing
TFSS	Targeted Financial Sanctions
UCITS	Undertakings for Collective Investment in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council Resolutions
VAs	Virtual Assets
VASPs	Virtual Asset Service Providers
VAT	Value added tax
VIES	Vat Information Exchange System
VTC	Voluntary Tax Compliance
WB	World Bank
WG	Working Group

# NATIONAL RISK ASSESSMENT

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## SECTION 1. INTRODUCTION

This report (2019 NRA) illustrates the outcome of the understanding of ML/TF risk by the San Marino Authorities and updates the risk assessment conducted in 2015 (2015 NRA).

The 2019 NRA was launched in 2018 and provides an insight of the ML/TF risks, threats and vulnerabilities of the Republic of San Marino having regard to data, information and documents collected from 2015 to June 2019.

In the past, in order to produce a valuable assessment of ML risk, with the Technical Assistance of the World Bank, the first NRA exercise was launched in April 2015 and finalized at the end of 2016 with the adoption of the Action Plan and National Strategy by the San Marino Government by Congress of State Decision n. 23 of 22 August 2016.

Risk assessment is periodically reviewed when there are new risks, major events or developments in the reference scenario. In particular, the understanding of ML/TF risk is an on-going exercise and the Authorities are requested to collect updated data and information, to monitor the follow up initiatives and adopt any further measures when needed.

In the 2019 NRA, an extended set of data and information has been used while the WB methodology has been integrated with the assessment of additional risk factors; this has also been done in order to address more specifically the TF risk (which was not assessed in the 2015 NRA). Moreover, the assessment of other potential risks arising from the so-called “cross-cutting” sectors and products has been carried out.

Based on the findings, San Marino will continue bolstering its risk-based approach through the application of proportionate and dissuasive mitigating measures commensurate with the level of ML/TF risks to which the Republic is exposed. This approach is the fundamental building block to counter money laundering, terrorism and its financing; to allocate resources (both human and technical) in an effective way and to ensure the correct implementation of measures based on the assessment of specific risks as indicated in FATF Recommendations.

The scope of this document is to provide a brief description of the main outcome of 2019 NRA, although confidential information is not disclosed in this report for security reasons.

### 1. PARTICIPANTS

As set under Article 16 ter of the AML/CFT Law<sup>1</sup> (as amended by Decree Law no. 139/2017), the Department of Finance and Budget identifies the public administrations, authorities and categories of obliged entities required to produce data, information, documents and statistics on the matters subject to the national risk assessment.

In this respect, the Department of Finance and Budget has disposed the review and updating of the 2015 NRA, entrusting the technical direction of the new assessment to the FIA, supported by the Technical Commission of National Coordination (hereinafter TCNC). In particular, the FIA and TCNC have drawn up the work program, the relative time-line, data and information to be acquired and assessed, the resources of the public administrations and authorities involved (as the Court, the CBSM, Police Forces and Interpol,

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<sup>1</sup> Law 17 June 2008 No. 92 as amended is available on FIA webpage (i.e. [AML/CFT Law](#))

Tax Office, OCA/former OCSEA, OEA, CLO, Statistic Office, Chamber of Commerce, Civil Registration, Demographic and Election Office). It is worth specifying, the operational support provided by some authorities – as the Court and the CBSM – has been broader, considering the relevance of their data/information.

With regard to the contribution of private sector, during 2019 NRA it was mainly related to the submission of questionnaire (with quantitative and qualitative data) and meetings to collect further information, relevant for the understanding of the ML/TF risks. For example, requests/questionnaires sent to the private sector were related to every kind of product/service provided by each category of FIs and some meetings were held.

## 2. SOURCES OF INFORMATION

In order to conduct ML threat assessment (“Module 1”) and to evaluate input variables related to national combating ability (“Module 2”), the Competent Authorities have provided to these WGs a series of data and information, which are – almost always – referred to the previous 5 years period evaluation (2015 – first half of 2019).

In general, one of the most relevant lessons learned from 2015 NRA is that all competent authorities should have in place a uniform and automated statistical system, which could be useful to obtain updated, aggregated and harmonized data, to be processed without adjustments, in a reasonable period of time.

Such goal has been mainly achieved, considering the size of the Country, the number of cases covered by statistics and the possibility for the Offices of the various Authorities to exchange methods and information very quickly.

In particular, national databases have been qualitatively and quantitatively extended in order to allow a more detailed statistical analysis and the Balance of Payment and an index of the “shadow economy” are being developed.

It is worth clarifying that San Marino Authorities have not experienced information gaps that limited or created difficulties in reaching conclusions.

It is worth mentioning that as regard modules covering FIs (“Modules 3” up to “Module 6”), WGs used the data referring to all FIs operating in San Marino related to 2015 – first half of 2019 (except for inherent variables’ data – products – for which the range is 2015 – 2018).

The analysis and assessment of the financial sector (banking, insurance, securities and other financial activities) is not limited to a sample of FIs but it covers all FIs operating in San Marino and not a sample testing.

In particular, the analysis of products offered by FIs is based on data and information collected from questionnaires sent to all FIs (100% of coverage) where quantitative data on the volume and number were requested as well as quality information on the level of internal controls and other measures adopted by FIs were sought.

To certain extent, this information has also been complemented by interviews with representatives of some FIs, when needed, and with information provided by the San Marino competent authorities.

With regard to DNFBPs (“Module 7”), the main sources of information were represented by the Statistic Office, the FIA Supervisory and Intelligence activities, the Court and the outcomes from “NFPs register” of the obliged entities referred to in Article 19 of the AML/CFT Law. Moreover, with regard to trust sector, WGs have used CBSM data and information (from the Trust Register and BO Trust Register), information from FIA Intelligence strategic analysis and dedicated questionnaires (related to qualitative and quantitative information) sent to trustees.

### 3. METHODOLOGY: NEW APPROACH

With regard to the WB tool, no interventions or adaption on the variable weights have been done.

In particular, WB's methodology is based on the analysis of threats and vulnerabilities to which the country is exposed and the WB's tool is based on the following modules:

- Module 1 (Threat assessment);
- Module 2 (National ML vulnerability), which is composed of the following sub-modules:
  - Module 3 Banking sector;
  - Module 4 Securities sector;
  - Module 5 Insurance sector;
  - Module 6 Other Financial Institution sector, composed of three sub-modules assessed independently:
    - Financial and Fiduciary Companies – FFCs;
    - Poste San Marino;
    - Issuing/Acquiring Payment Institutions;
  - Module 7 DNFBPs sector, according to Art. 19 and Art. 20 of the AML/CFT Law applicable to these years, composed of twelve sub-modules<sup>2</sup> assessed independently:
    - Lawyers and Notaries;
    - Accountants;
    - Auditors and Auditing Firms (new);
    - Trust and Company Service Providers (new);
    - Mutual Credit Guarantee Consortium (new);
    - Real estate agents;
    - Providers of service related to games of chance and gaming houses;
    - Entities carrying out the activity of custody and transport of cash, securities or values;
    - Dealers in precious metals and stones – DPMSs;
    - Managers of auction houses, art galleries and traders in antiques;
    - Companies or entities established in a form other than a company, which carry out activities, not strictly reserved, similar to those carried out by entities referred to in Article 20, para 1, letter a) and c) (Other companies Art. 19, letter g bis);
    - Service companies that carry out activities supporting the professional services provided by the entities referred to in Article 20 (Service companies Art. 19, letter g ter).

As regards the ML Threat Assessment ("Module 1"), in relation to the collection of data on ML cases, it is worth mentioning that the WG has decided to add further fields/categories<sup>3</sup> which were not present in the module and, in the same time, not to consider other fields/categories<sup>4</sup> with the aim to adapt the module to the current context of San Marino.

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<sup>2</sup> It's worth noting that module 7 was composed of 9 sectors during the 2015 NRA and of 12 sectors in the 2019 NRA, according to Art. 19 and Art. 20 of the AML/CFT Law applicable to these years.

<sup>3</sup> As Information on the profession of the citizens and non-citizens involved in the investigations, Information on the main economic activity of the domestic/foreign legal entities involved in the investigations, Phase of ML, Timeframe of the predicate offense and timeframe of the related ML.

<sup>4</sup> In particular, the following information has not been collected: average amount in detected bank accounts, number of the money transfers, average amount of money transfers and regions involved.

In “Module 2”, all input variables provided by the national combating ability form have been evaluated. Moreover whenever present (“Module 3”, “Module 4” and “Module 5”), WGs have decided to assess also the optional variable dedicated to the “Level of Market Pressure”.

With reference to “Module 3”, Module 4”, Module 5”, Module 6” (referred to FIs) and “Module 7” (referred to DNFBPs), the input variables have been assessed through an horizontal approach by an unique assessment across all FIs and across all DNFBPs (while in the 2015 NRA, the same input variables were assessed separately for each category of obliged entities).

Moreover, with regard to 2019 NRA, the WB methodology has been complemented and integrated with an assessment of additional risk factors to address TF risk (“Module 8”) - not assessed in the previous NRA - and the evaluation of other potential risks arising from the so called following cross-cutting sectors and products such as:

- analysis on the use of cash (even if the level of cash activity has been already analysed in relation to each product/service provided by obliged entities);
- assessment of NPOs;
- assessment of legal entities;
- assessment of trust and trustee;
- assessment of new technologies.

## SECTION 2. COUNTRY CONTEXT

### 1. GEOGRAPHICAL POSITION

The Republic of San Marino is an enclave in the Italian Peninsula, as already explained in the previous NRA the boundaries of San Marino are constituted by Italian regions (Emilia Romagna and Marche) and its population is approximately around 33.000 inhabitants.

The official language of San Marino is Italian.

### 2. INSTITUTIONAL FRAMEWORK

The Great and General Council, composed of 60 Parliamentarians, exercises the legislative power, directs and controls the Government policy. The legislative power means the adoption of Laws, which are binding on the entire community.

The Parliament is headed by two Captains-Regent, who are elected by the Council every 6 months and act as heads of State for that period.

The Government of San Marino (Congress of State) is elected by the Great and General Council and exercises executive power.

A description of the Institutional and Judicial framework governing San Marino is succinctly exposed in the Summary Report of 2015 NRA while a full set of information is available on the website of Parliament of the Republic of San Marino (i.e. *Consiglio Grande e Generale*).<sup>5</sup>

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<sup>5</sup> <https://www.consigliograndeegenerale.sm/on-line/home.html>

### 3. DESCRIPTION OF SAN MARINO AML/CFT CONTEXT

#### 3.1 SAN MARINO AND MONEYVAL

San Marino is a member of Moneyval Committee since 1998. Over the years, San Marino has been subjected to four mutual evaluation rounds.

The latest (fourth) round of evaluation (i.e. MER 2011) highlighted the substantial progress made by the Country, as confirmed by the results of 2013 and 2015 follow-up Reports.

In 2011, as specified in the last MER, the Moneyval assessed San Marino AML/CFT framework identifying certain elements connected to the ML risks, threats and vulnerabilities. For further information on the outcome of the evaluation please see the [Executive Summary document](#) of MER 2011.

The fifth round of evaluation has begun during 2019 and it will presumably be completed within the end of 2020.

#### 3.2 IMF ASSESSMENT: SAN MARINO ON AML/CFT ISSUES

San Marino joined the International Monetary Fund (IMF) on 23 September 1992<sup>6</sup>.

Since 2010, on annual basis, the IMF has been involved in the consultation of San Marino, mainly in relation to Article IV missions.<sup>7</sup>

Since 2016, the following information was provided to the public on San Marino AML/CFT initiatives and AML/CFT-related issues.

On *IFM Survey*, San Marino mission chiefs Alexander Tieman and Kazuko Shirono in relation to international cooperation which is exceptionally important for a small country like San Marino, the following examples were provided: “[...] Deepening international cooperation has always been a priority for San Marino. That is especially true for the cooperation with Italy, a country with which the microstate shares a language and many cultural and business links. In fact, San Marino has recently concluded a bilateral economic cooperation agreement with Italy, and has set up a credit register to share credit information with international counterparts. San Marino has also revamped its anti-money laundering rules, and now fully complies with international norms. But international cooperation goes beyond working with Italy. San Marino has concluded a monetary agreement with the European institutions, in which the parties agree that San Marino can use the Euro as its legal tender. And last year, San Marino - together with Monaco and Andorra - started negotiations on an association agreement with the European Union to guarantee the free movement of goods, capital, services, and people. Such agreements are essential for unobstructed international trade and they show the world that San Marino is a place where one can do business and invest confidently.”<sup>8</sup>

In 2017, under Article IV consultation the following information has been given to the public<sup>9</sup>.

The IMF Staff Report indicates that: “San Marino’s engagement in international cooperation remains crucial (Annex IV). Improved international relations should help revive cross-border economic activity and support the recovery in San Marino. The AML/CFT national risk assessment, completed last year, is a welcome step toward further increasing the effectiveness of the AML/CFT regime, and the authorities are encouraged to implement the AML/CFT Action plan.”

<sup>6</sup> <http://www.imf.org/external/country/SMR/>

<sup>7</sup> Missions are undertaken as part of regular (usually annual) consultations under [Article IV](#) of the IMF's Articles of Agreement, in the context of a request to use IMF resources (borrow from the IMF), as part of discussions of staff monitored programs, or as part of other staff monitoring of economic developments.

<sup>8</sup> <https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar050916a>

<sup>9</sup> <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> ; IMF Country Report no. 17/86

As indicated above, the IMF Staff Report contains Annex IV on “San Marino and International Cooperation” which is here below provided.

#### **Annex IV. San Marino and International Cooperation**

**OECD initiatives.** San Marino is a participant in the OECD initiative to tackle Base Erosion and Profit Shifting (BEPS) and committed to implementing the BEPS package. To this end, the authorities created a multidisciplinary group in July 2016 to discuss the implementation of BEPS measures. San Marino is also among the early adopters that plan to implement Automatic Exchange of Information by 2017. On the domestic front, in November 2015, the authorities have adopted a legislation on international tax cooperation to provide legal basis for implementing these initiatives.

**AML/CTF measures.** The authorities completed the AML/CFT national risk assessment in May 2016, and prepared an AML/CFT action plan identifying priority actions in order to mitigate money laundering risks. This developed into the adoption by the parliament of the National Strategy on AML/CFT for 2016-2018 and the detailed Action Plan in August 2016. In addition, MONEYVAL, acknowledging the effective action taken by San Marino, reclassified the country as a bi-annual follow-up case in April 2015. The authorities have been also working toward ensuring compliance with Financial Action Task Force (FATF) recommendations.

**Bilateral cooperation with Italy and the EU.** Important agreements with Italy, including an Economic Cooperation Agreement and a Cooperation Agreement in Financial Matters, came into force in early 2015. In addition, San Marino was added to the Italian white list of countries allowing for an effective exchange of information with the Italian Tax Authorities in January 2015. In terms of EU relations, San Marino, together with Andorra and Monaco, started negotiations on an association agreement with EU in 2015. In the meantime, an agreement on the automatic exchange of financial account information with EU, signed in late 2015, came into force in June 2016.

**Table 1 - Annex IV. San Marino and International Cooperation**

In that report is also provided the Statement by Mr. Carlo Cottarelli, Executive Director for the Republic of San Marino and Ms. Marta Spinella, Advisor to the Executive Director of April 3, 2017 where it is indicated that: “In the last years, San Marino has taken clear action in the framework of MONEYVAL to improve its AML/CFT regime, making great efforts to ensure compliance with the FATF Recommendations and adopting resolute and far-reaching measures to address the concerns voiced by this organisation. The national risk assessment has been concluded and further measures to implement the related Action Plan are underway.

Later in 2018, the Staff Concluding Statement of the 2018 Article IV Mission on January 17, 2018 indicated that “San Marino’s continued efforts to engage with the international community and enhance transparency are crucial. The recently ratified regulatory update of the AML/CFT framework will help improve the credibility of the system. A framework for due diligence should be developed for the new residency programs to safeguard financial integrity. Further cooperation with Italy, including establishing a memorandum of understanding with the Bank of Italy, will be important to strengthen institutional capacity of San Marino”.

In 2019, the IMF Staff Report indicates that “Sustained efforts are needed to contain financial integrity risks. The authorities reported the transposition of the 4<sup>th</sup> EU Anti-Money Laundering (AML) Directive to national laws, implementation of risk-based supervision by the Financial Intelligence Agency (FIA), and strengthening of AML/CFT legal and regulatory frameworks following the AML National Risk Assessment and Action Plan. Recent peer review report on the Exchange of Information on Request published by the OECD Global Forum upgraded San Marino’s overall rating from “Largely Compliant” to “Compliant” while the EU removed San Marino from its tax haven gray list. Continuous efforts are needed to mitigate financial integrity risks, including through implementing the OECD’s Base Erosion and Profit Shifting actions, strengthening FIA-police collaboration, and improving the effectiveness of transaction monitoring by financial institutions. The authorities’ plan to prepare a second National Risk Assessment is a step in the right direction.”

The report also affirms “the authorities have developed and started implementing the AML/CFT action plan and are working on a second National Risk Assessment. A working group on BOP statistics has been established and, with support of the Fund technical assistance, the authorities published balance of payments statistics for 2017 and international investment position statistics for 2016–17. Regular publication of BOP data is expected to start in 2019.”

On March 22, 2019, the Statement by Domenico Fanizza, Executive Director for the Republic of San Marino, and Francesco Spadafora, Senior Advisor to the Executive Director indicate: “San Marino’s authorities underscore the transposition of the 4<sup>th</sup> EU Anti-Money Laundering (AML) Directive into national laws and the strengthening of AML/CFT legal and regulatory frameworks. Following the results of the AML National Risk Assessment and Action Plan, the authorities indicate that they have adopted regulatory measures on sound management in relation to ML/TF risks, which contain provisions related to corporate governance and financial integrity, reiterating the importance of the “tone at the top”.

On March 25, 2019, the IMF Executive Board concludes the 2019 Article IV Consultation with the Republic of San Marino stating “They welcomed the progress in strengthening the framework for anti-money laundering and combating financing of terrorism while noting that further efforts are needed to contain financial integrity risks”.

### 3.3 THE MONETARY AGREEMENT WITH THE EU AND THE ASSOCIATION AGREEMENT

On March 2012, the European Union (EU) signed a Monetary Agreement with the Republic of San Marino. This Agreement authorises San Marino to use the euro as its official currency, to grant legal tender status to euro banknotes and coins, and to issue limited quantities of euro coins.

Under this Agreement, San Marino committed to adopt the relevant EU legislation (*acquis communautaire*) in the area of euro banknotes and coins, the fight against fraud and counterfeiting, banking and financial legislation, including the prevention of money laundering and statistical reporting requirements.

Thus, San Marino shall transpose into national legislation the most relevant EU AML/CFT measures: Directives, Regulations and Decisions.

The alignment with EU financial legislation, provided for by the Monetary Agreement with the EU, contributes to achieving higher levels of integration of San Marino economy with the European Single Market.

A concrete example of this integration is the entrance of San Marino into SEPA (Single Euro Payment Area) as from February 2014, so as to guarantee the operation of the national payment system in the new context of European rules for retail payments. This is a significant recognition of the progress made by San Marino also in view of greater integration of the banking sector with the European capital market.

In 2015, San Marino, Andorra and Monaco started the negotiations for an Association Agreement with the EU.

Within the context of the Monetary Agreement, San Marino Authorities have transposed the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 *on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (so called 4<sup>th</sup> EU AML Directive) into the domestic legal framework by amending AML/CFT Law. This occurs with the adoption of Decree Law no. 139 of 11 December 2017.

### 3.4 BILATERAL AND MULTILATERAL COOPERATION ON TAX MATTERS

San Marino is strongly committed to a process of internationalization and continues to adapt its legislation to international standards also in the field of exchange of information.

On 21 November 2013, on occasion of the sixth Global Forum on Transparency and Exchange of Information for Tax Purposes in Jakarta, San Marino signed the Convention on Mutual Administrative



Assistance in Tax Matter (as amended by the 2010 Protocol). Said Convention entered into force for San Marino on 1 December 2015.

With reference to the exchange of information on request (EOIR) on tax matters (OECD model) the exchange of information function is carried out by the Central Liaison Office (CLO): an autonomous body which functions as San Marino's competent authority for all international agreements on the exchange of information adopted by San Marino. The responsibilities of the CLO extend to San Marino's network of TIEAs (Tax Information Exchange Agreements) and DTCs (Double Tax Convention), the MAAC (Multilateral Convention), as well as the exchange of VAT-related information in the framework of administrative agreements with Italy..

In October 2014, San Marino signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and joined the Early Adopters Group.

In particular, San Marino is an Early Adopter concerning the application of the CRS (Common Reporting Standard) 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).

In 2015 San Marino signed the FATCA intergovernmental agreement with the United States of America (Model II). This Agreement entered into force on 30 August 2016.

Law no. 174 of 27 November 2015 ("International fiscal cooperation") regulates the international tax cooperation implemented by the Republic of San Marino in execution of international agreements, bilateral or multilateral, entered into with foreign countries or jurisdictions.

In 2017, San Marino signed the Multilateral Agreement related to OECD Base Erosion and Profit Shifting (BEPS) project.

In 2019, with reference to San Marino's EOI (exchange of information) mechanisms, no. 54 bilateral international agreements (including Italy) were in force, while the Convention on Mutual Administrative Assistance in Tax Matters (multilateral convention, MAAC) has been in force since 1st December 2015 and concerns about 130 countries.

With reference to the EU Directive on Mutual Administrative Assistance in Tax Matters, San Marino is active in exchanging information through VIES (Vat Information Exchange System) and NCTS (New Community Transit System) and it exchanged information based on the EU-San Marino Savings Agreement Directive (Law no. 81/2005).

With regard to the fiscal relationship with Italy, in 2012, San Marino ratified the Protocol amending the 2002 Double Taxation Agreement, signed on 13 June 2012. The Protocol of Amendment entered into force on October 3, 2013.

Moreover, in 2012, the Economic Cooperation Agreement and the Financial Cooperation Agreement were concluded with Italy. The ratification of these two bilateral agreements on economic cooperation and financial cooperation and, by providing the legal basis for an effective exchange of information, was considered as one of the main requirements that has been kept into account with respect to the position of San Marino in the so-called "Italian black list". In fact on February 2014, San Marino was removed from the "Italian black List".

These agreements are an important precondition to give new impetus to the bilateral relations in the economic and financial field as well as to set the grounds for the growth of San Marino's economy.

During 2014 and 2015 the relations with Italy improved following San Marino's removal from the so called "Italian tax black list", the entrance into force of bilateral agreements (the Economic Cooperation Agreement, the Financial Agreement and the Double Taxation Agreement) and the inclusion in the "Italian tax white list" and the placement in an anti-money laundering "white list".

To conclude, San Marino has made significant progress in aligning its legislation with international standards of transparency and tax cooperation, and is participating in the exchange of tax information in line with OECD and FATCA standards.

## 4. OVERVIEW OF THE ANALYSED SECTORS

In the following paragraphs some contextual information are reported, as further detailed in the 2019 NRA, on the categories of “obliged entities” subject to AML/CFT obligations which include FIs, “Professionals” and “Non- Financial Parities”. Worth specifying is that the list of “obliged entities” under AML/CFT Law - as specified in other sections of this report - is broader than the list of DNFBNPs set by the FATF.

As previously indicated in the report, in the 2019 NRA, the San Marino Authorities, with the involvement of the private sector, have also scrutinized the NPOs, legal arrangements and legal persons. Information on new technologies and on the misuse of legal entities and legal arrangements was also provided.

### 4.1 OVERVIEW OF THE FINANCIAL SECTOR

The financial system of the Republic of San Marino has a significant dimension compared to the domestic economy, more than 4 times the GDP as total assets (in 2018), with a predominant presence of the banking sector (88% in terms of volume of funds managed)).

Since 2008 the size of the financial system has decreased sharply (approximately 60% of total assets as at December 2018) mainly as a result of the path taken by the Republic of San Marino towards achieving the best standards of transparency and compliance (see box below). The consequence of this path has been a loss of attractiveness of San Marino for investors looking for a non-transparent regime, with the end of a model based mainly on banking secrecy, corporate anonymity and privileged taxation. As a final result, the funds managed in the financial system have decreased with a constant pace; a process primarily driven by the banking sector, due to its relevance in the financial system.

#### **The path towards the best standards of transparency and compliance**

Since 2014, as a result of the efforts started years previously, the Republic of San Marino has made significant achievements not only in the field of AML-CFT, but also in transparency - international collaboration in tax matters and in the adoption of the EU *acquis communautaire* for the financial sectors, also receiving important recognitions by the competent international organisations.

##### **Tax matters collaboration**

- February 2014: Italy removes San Marino from the list of countries with privileged fiscal regime (black list);
- October 2014: SM signs the “OECD Multilateral Competent Authority Agreement”, as early adopter country;
- December 2014: Italy includes SM in the fiscal white list countries, with which the exchange of information is feasible, pursuant to international conventions to avoid double taxation on income;
- January 2015: entry into force of the SM-Italy Agreement on economic cooperation, together with the Agreement on financial cooperation;
- October 2015: SM signs the US FACTA agreement;
- December 2015: SM signs an agreement with EU regarding the automatic exchange of financial information;
- July 2018: the OECD Global Forum evaluates SM as compliant regarding the exchange of information on request for tax purposes (the previous rating was Largely Compliant);
- December 2018: ECOFIN recognizes the SM’ compliance on fiscal transparency, equity and anti BEPS measures.

##### **EU *acquis communautaire* adoption process**

Following the Monetary agreement signed by SM in 2012 and the consequent obligation to adopt the EU *acquis communautaire* for the banking and financial sectors, many laws and regulations have been issued since 2014:

- 2014: CBSM Regulation 2014-04 to adopt Directives 2007/64/CE (PSD) and 2009/110/CE (IMEL);
- 2015: CBSM Regulation 2015-02 on SEPA standards;
- 2016: CBSM Regulations 2016-01 on Insurance Deposit Scheme (Directive 2014/49/UE); CBSM Regulation 2016-02 on Corporate-Consolidated Financial Statement of authorised entities (Directive 86/635/CEE);
- 2017: Decree Law no. 139 on transposition of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (so called 4<sup>th</sup> EU AML Directive) into the domestic legal framework by amending AML/CFT Law;
- 2018: Delegated Decree (DD) no. 111 on settlement finality in payment to adopt Directive 98/26/CE; DD no. 148 on investor compensation schemes (Dir. 97/9/CE – ICSD); DD no.149 on recovery and liquidation of credit institutions (Dir. 2001/24/CE); DD no.150 on Trust guarantee contracts (Dir. 2002/47/CE); DD no.177 on payment services (Dir. 2015/2366 PSD2).
- 2019: DD no. 50 on prudential and additional supervision (Dir. 2002/87/CE FICOD, Dir. 2013/36/CE CRD-IV, Reg. 575/2013 CRR); DD no. 61 on market abuse (Dir. 2014/65/UE MIFID II, 2014/57/UE MAD II, Reg. 600/2014 MiFIR, Reg. 596/2014 MAR).

According to Law 165/2005 (i.e. LISF), all entities that carry out the activities listed in Annex 1 (reserved activities) have to be preliminary authorised and subsequently supervised on their technical profiles by the Supervisory Authority (Central Bank of San Marino - CBSM).

As of 31 December 2018, the entities supervised by the CBSM, were:

- 6 operating banks;
- 3 financial and fiduciary companies;
- 3 management companies;
- 2 life insurance companies;
- 1 payment institution.

The framework of the financial system is completed by the insurance – reinsurance intermediaries, financial agents and professional trustee, entities that do not carry out reserved activities as described above, but they must be authorised by CBSM before operating. As of 31 December 2018 these entities were:

- 37 Insurance and reinsurance intermediaries (4 of which suspended);
- 0 financial agents;
- 11 professional trustees.

At the same date, 45 foreign insurance companies were authorised to conclude insurance contracts in the Republic of San Marino through authorised intermediaries. A total of 25 foreign companies were from Italy and the remaining 20 from other European countries.

The following table shows the incidence rates – based on funds managed volume – for each of the financial sector as at December 2018. The table indicates that the weight of the banking sector in terms of funds managed is about 88% of the total financial system. The other financial sectors are of less importance in terms of volumes.

FINANCIAL SECTORS	% OF TOTAL FUNDS MANAGED VOLUME
Operating Banks	88%
Financial and Fiduciary Companies	4%
Life Insurance Companies	4%
Payment Institutions	2%
Management Companies	1%
Trusts	1%

Table 2 – Financial Sectors total funds managed volume

#### **4.1.1 BANKING SECTOR**

The banking sector is currently facing many issues due to a sharp reduction in funds managed, mainly caused by the change of the business model, as a consequence of the path undertaken by the Republic of San Marino towards better standards of transparency and compliance (see above).

At the end of 2018, the number of banks registered in the CBSM Register was 7 units (of which 1 was a non-operational bank), down from 10 units registered in 2014 (of which 3 were non-operational).

The downsizing of the banking sector, also pushed by the global financial crisis and Italian fiscal amnesties, has led to a reduction in the quality of assets, to an increase of the NPLs phenomenon and a reduction of banks' liquidity. As of December 2018, the total assets amounted to €4.576 billion.

Further information on data and trends of the banking system and on the Financial Sector Strategy in place for the stabilization of the San Marino financial sector is described in a specific document published in May 2019 on the CBSM website<sup>10</sup>.

Banks are focused primarily on retail banking and they do not offer a high range of sophisticated or diversified products, which mitigate the vulnerability of the sector. All branches of these banks are located in San Marino

#### **4.1.2 FINANCIAL AND FIDUCIARY COMPANIES SECTOR**

As at 31 December 2018, the San Marino Financial / Fiduciary Companies (FFCs) sector consisted of 3 operators, for a total assets of euro 133 million. FFCs manage financial instruments portfolios, loans, leasing and fiduciary mandates.

#### **4.1.3 INSURANCE SECTOR**

The insurance sector is composed by domestic life insurance companies and insurance intermediaries.

During the 2019 NRA evaluation period, two existing domestic Life insurance companies carried out their activities, operating through distribution agreements with San Marino banks and with insurance intermediaries operating in the Country. The gross premiums recorded by domestic insurance companies in 2018 were around euro 12 million.

At the end of 2018, 37 Insurance Intermediaries were registered in the CBSM Public Register, divided into natural persons and sole proprietorships (n. 6), non-financial institutions (n. 25), FIs (n. 6), with a downward trend during the evaluation period.

As above mentioned, these intermediaries offer foreign insurance products and services from European insurance companies (mostly Italian).

#### **4.1.4 SECURITIES SECTOR**

In the first NRA evaluation period, the securities sector consisted of two different type of entities: investment companies and management companies. Since 2015, the investment companies have ceased their activities and the securities sector is now composed only of the latter companies, which are authorised to provide collective investment services.

Until 2017 the sector remained stable in terms of number of companies (2). In 2018, the sector expanded following the start of operations by a new management company. All 3 management companies are owned by San Marino banks.

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<sup>10</sup> <https://www.bcsmsm/site/en/home/articolo5820.html>

#### 4.1.5 ISSUING AND ACQUIRING PAYMENT INSTITUTIONS SECTOR

The issuing & acquiring sector is composed of 2 active financial institutions enrolled in the register of authorised parties since 2016 (a bank and a payment institution). It is worth mentioning that card holders are mainly residents, both natural and legal persons.

#### 4.2 OVERVIEW OF THE NON-FINANCIAL SECTOR

According to the AML/CFT Law, apart from FIs, “Professionals” and “Non-financial parties” (i.e. NFPs) are considered “obliged entities” and shall apply AML/CFT obligations. The list of persons and entities encompassing the categories of “Professionals” and “NFPs” includes the list of DNFBPs set by the FATF.

The San Marino Authorities have embraced the approach by the European Union by including additional persons and entities among the categories of “obliged entities”. This derives from the signature of the Monetary Agreement between San Marino and the European Union, described above in the report, which – among other things– requires the transposition of the AML/CFT Directives and Regulations into the domestic legal framework.

The transposition of the so-called IV AML Directive and the outcome of the 2015 NRA have led to a change in the list of NFPs, (i.e. “obliged entities” or “obliged parties”) more in details:

- some categories of entities which were included among “obliged entities” during the 2015 NRA are no longer included among NFPs such as the rental of registered movable goods (i.e. “rent a car” business activity);
- others entities have been included by fine-tuning the business activities for which they are subject to AML/CFT obligations (i.e. focusing of those activities falling under the scope of AML/CFT);
- others entities have been incorporated into a single category such as “action houses”, “art galleries” and “trade in antiques”.

#### 4.2.1 PROFESSIONALS

Professionals are actually defined in Art. 20 of the AML/CFT Law. These professions can be performed by those who are in possession of the appropriate qualification and are members of the respective professional associations.

Each Professional Association is governed by internal statutory provisions and is legally recognized by the State on the basis of relevant Decrees.

It is worth noting that in San Marino, the professional firms are made up of the Professional(s) and a small number of employees, as well as to the Auditing Firms, which are a few small businesses.

The table below reports the number of Professionals for each category. On this regard, it has to be noted that Accountants and Lawyers, who act as Auditors, are registered also in the Register of Auditors of the Republic of San Marino, hence they are included in both categories.

Number of Professionals* (as at 30 June 2019)					
CATEGORY/YEAR	2015	2016	2017	2018	2019
Lawyers and Notaries	125	122	124	125	<b>127</b>
Accountants	118	114	115	117	<b>117</b>
<i>of which Auditors</i>	126	120	117	119	<b>120</b>
Auditing Firms	7	7	7	6	<b>5</b>

*\*Data certified by Professional Association*

Table 3 – Number of Professionals

#### 4.2.2 NON-FINANCIAL PARTIES

The category of Non-Financial Parties (NFPs) includes a list of heterogeneous entities whose structures are generally small (usually, a director/owner and one or two employees) and whose business activities are not sophisticated, both in terms of transactions, operations and/or services provided and in terms of customers' composition (i.e. customer base profile).

Non-Financial Parties are actually defined as follows in Art. 19 of the AML/CFT Law:

- a. trust or company service providers;
- b. mutual credit guarantee consortium with limited liability among economic operators of the Republic of San Marino and regulated by Law no. 42 of 22 July 1977;
- c. real estate agents;
- d. providers of services related to games of chance and gaming houses;
- e. entities carrying out the activity of custody and transport of cash, securities or values;
- f. dealers in precious metals and stones, as defined in Article 4 of the technical annex;
- g. managers of auction houses, art galleries or traders in antiques;
- g bis. companies or entities established in a form other than a company, which carry out activities, not strictly reserved, similar to those carried out by the entities referred to in Article 20, paragraph 1, letters a) and c);
- g ter. service companies that carry out activities supporting the professional services provided by the entities referred to in Article 20.

As provided by Art. 17, paragraph 5 of the AML/CFT Law, the FIA has established an electronic ad-hoc register of the obliged entities referred to in Article 19 ("*Registro SNF*", i.e. *NFPs Register*). Such entities shall provide the FIA with updated information and documents in accordance with the procedures determined by the latter.

**The NFPs Register provides the exact number of obliged entities belonging to each category.** The Register is continuously updated following new registrations, suspensions and cancellations that the obliged entities are required to make by accessing the portal of the Public Administration, from which data are automatically acquired.

As of 30 June 2019, there were 149 NFPs entered in the aforesaid Register, as indicated in the table below:

Number of NFPs (registered as at 30 June 2019)	
Trust and company service providers	16
Mutual Credit Guarantee Consortium	1
Real estate agents	20
Providers of services related to games of chance and gaming houses	1
Entities carrying out the activity of custody and transport of cash, securities or values	1
Dealers in precious metals and stones (DPMSs)	41
Managers of auction houses, art galleries and traders in antiques	20
Companies or entities established in a form other than a company, which carry out activities, not strictly reserved, similar to those carried out by entities referred to in Article 20, para 1, letter a) and c) (Other companies Art. 19, letter g bis)	7
Service companies that carry out activities supporting the professional services provided by the entities referred to in Article 20 (Service companies Art. 19, letter g ter)	42
<b>TOTAL</b>	<b>149</b>

Table 4 –Obliged entities registered in NFPs Register

### 4.2.3 TRUST AND COMPANY SERVICE PROVIDERS

As established by the Trust Law no. 42 of 1 March 2010, the activity of professional trustee consists in acting as trustee, in the Republic of San Marino, for more than one trust and it is subject to the authorisation of the CBSM.

As at 30 June 2019 no. 11 professional trustees were enrolled in the relevant Register held by the CBSM. Among these no. 11 professional trustees there are no. 5 FIs while the remaining no. 6 are respectively no. 3 corporations (2 Joint stock companies and 1 Limited liability company) and no. 3 natural persons.

As for AML/CFT purposes, Art. 19 letter a) of the AML/CFT Law includes among NFPs trust and company service providers. On this regard, the Art. 1 of the AML/CFT Law specifies that trust or company service providers are meant to be natural or legal persons that provide to third parties, by way of its business, namely receiving a remuneration by any means and in any form the services set under the AML/CFT Law (Art. 1, paragraph 1, letter n ter). If TCSPs act as a trustees for only one trust they are not obliged to be authorised by the CBSM as Professional trustee.

As of 30 June 2019, this category includes no. 16 TCSPs (which are obliged entities). More specifically there are no. 2 Company Service Providers (hereinafter CSPs) and no. 14 trust service providers (no. 3 legal entities and no. 11 natural persons), out of no. 14 trust service providers no. 6 are professional trustees established in accordance with the Trust Law no. 42 of 1st March 2010.

### 4.2.4 NON-PROFIT ORGANISATIONS

The NPO sector in San Marino is mainly governed by Law no. 101 of 1 July 2015 (Law on Foundations), Law no. 75 of 16 June 2016 (Provisions on Associations and Volunteering) and Title VII (Foundations and non-profit associations) of Law no. 129 of 23 July 2010 (Article 37).

As conducted in 2009, ten years later, in 2019, the San Marino authorities have carried out an in-depth survey of the NPO sector with the aim to update data comparing the previous survey (of 2009) with the current situation.

On the basis of the data as of 30 October 2019, in San Marino there are 403 non-profit organisations, broken down as follows:

- 329 associations;
- 23 foundations;
- 51 ecclesiastical institutions.

From the analysis of the data collected and the in-depth analyses carried out, only 1.2% (5 out of 403) of NPOs were found to fall within the FATF's definition of NPOs at risk<sup>11</sup>.

### 4.2.5 NEW TECHNOLOGIES

On new technologies, the Republic of San Marino has adopted the Delegated Decree n. 86 of 23 May 2019 (briefly, DD 86/2019), that provides a legal framework for some blockchain applications, introducing the definition of "Blockchain Entity".

The Decree establishes that Blockchain Entities (hereinafter BEs) are defined as any legal person who uses DLT (distributed ledger technologies) for its business activities (e.g. agriculture, manufacturing). For this reason, the scope of BEs activities is broader than the scope of VASPs, as defined in the FATF glossary.

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<sup>11</sup> According to the FATF "NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

To date, no Blockchain Entities have been registered in San Marino. However, the registration procedures of two Blockchain Entities are underway, which will presumably be completed within the end of 2019 and the beginning of 2020.

## SECTION 3. ML RISK ASSESSMENT

According to the WB model adopted by San Marino, the ML risk is the combination of ML threat and ML vulnerability.

Compared to 2015 NRA, there was a contraction in terms of ML risk exposure. Thus, the overall ML risk of San Marino slightly decreased over these years.

This is due to a moderate decrease in the ML threat and a more relevant reduction of ML vulnerability.

The ML vulnerability reduced mainly because of the strengthened capability of the national authorities to combat ML, the increased quality of preventive measures adopted by the most significant obliged entities.

### 1. ML THREAT

#### 1.1 INFORMATION ON THE CRIMINAL ENVIRONMENT OF SAN MARINO

In general, the domestic crime rate in the Republic of San Marino is relatively low, largely due to geographical and societal elements that characterize San Marino and to the deterrent effect of stringent and effective law enforcement.

Since 2015, the majority of recorded crimes consists in the misuse of credit cards (or similar devices) for small amount of money complained by residents for credit cards cloning and offences related to narcotic drugs (mainly referred to the use and possession of small quantities, and not to trafficking).

Although such offences are the most frequent crimes committed in San Marino, they have not generated proceeds such as to be considered for ML purposes.

As of 2015, the offences committed in San Marino (or committed both in San Marino and abroad) which have generated proceeds of crime relevant for ML purposes result to be swindling/fraud, misappropriation and corruption.

#### 1.2 ML THREAT ANALYSIS

The analysis of ML threat<sup>12</sup> consisted of the scrutiny of criminal proceedings (investigated/prosecuted) during the period under evaluation (1<sup>st</sup> January 2015 to 31<sup>st</sup> July 2019).<sup>13</sup>

Moreover, the analysis of ML threat also included the information provided by the Judicial Authority in the context of MLA, the FIU to FIU cooperation and the LEAs cooperation, including ARO information.

Financial flows information (inflows and outflows) in relation to all FIs was considered in order to analysis the exposure of San Marino to foreign Jurisdictions.

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<sup>12</sup> A threat is defined as a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities. Threat is described as one of the two factors which determines the ML risk, and typically it serves as an essential starting point in developing an understanding of ML/TF risk.

<sup>13</sup> For further information on the methodology adopted, please see the explanations provided in the 2015 NRA-Summary Report: <https://www.aif.sm/site/home/approccio-basato-sul-rischio/articolo50005683.html>.



First, it should be noted that since 2015 there has been a slight reduction in the overall threat level of ML. This is mainly due both to the reduction of the level of ML threat associated with domestic crimes generating proceeds and the level of ML threat in relation to foreign predicate offences.

### 1.2.1 INFORMATION ON DOMESTIC AND FOREIGN PREDICATE OFFENCES

The 2019 NRA outcome confirmed the 2015 NRA results: the laundering of proceeds of crimes committed abroad is considerably prevailing over the laundering of proceeds generated by crimes committed domestically.

In the 2019 NRA, most of the predicate offences committed in San Marino and laundered in the Country mainly derive from “Swindling”/“Fraud”<sup>14</sup>, “Misappropriation” and “Corruption”.

In ML cases where predicate offences are committed abroad and laundered in San Marino, the most relevant crimes are “Swindling”/“Fraud”, “Misappropriation” and “Bankruptcy”.

The results of the 2019 NRA confirm broadly the 2015 NRA outcome in this respect.

### 1.2.2 LEVEL OF ML THREAT ASSOCIATED WITH PREDICATE OFFENCES

As already determined in the 2015 NRA, in the 2019 NRA most of the relevant crimes generating proceeds related to ML cases and passive MLA cases refer to “corporate crimes”.

For the scope of this report, the term “corporate crimes” occurs where individuals abused of their roles (i.e. shareholder or director) to misappropriate funds belonging to legal persons (i.e. diversion of corporate assets and funds from a company) or where companies were used to commit crimes generating proceeds laundered in San Marino.

The table below describes the level of ML Threats<sup>15</sup> in relation to the type of the underlying predicate offences based on the analysis carried out on ML cases (i.e. convictions, indictments and on-going investigations) in San Marino.

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	
Theft	Medium-Low
Drug trafficking; Possession for the purpose of drug-dealing	
Exploitation of prostitution	
Misuse of credit cards or similar devices	
Extortion	
Exploitation of illegal immigration	
Illegal gambling	Low
Abusive exercise of an activity	
Counterfeiting and alteration of marks of intellectual works and trademarks	

Table 5 - Level of ML threat related to Predicate Offence

<sup>14</sup> With the term swindling the following crimes are intended: swindling/fraud, here including swindling to the detriment of the Republic of San Marino or public bodies, tax evasion, unfaithful declarations due to false invoices, use and issuance of false invoices, tax fraud (the latter also committed through unfaithful declaration due to false invoices and use and issue of invoices for non-existent operations or services).

<sup>15</sup> The level of ML threat has been assigned on the following factors: the number of cases detected, the amount involved in ML cases, the amount of assets/funds seized and the amount of assets/funds confiscated.

It has to be noted that “swindling/fraud” as well as “misappropriation”, which are the most relevant predicate offences (both domestic and foreign), have maintained the same level of ML threat (“high”) which resulted in the 2015 NRA.

The 2019 NRA confirmed the level of ML threat associated to “Criminal conspiracy” and “Mafia type criminal association” (“medium-high”) meaning that some ML cases have shown that sort of agreement between two or more persons were in place with the aim to commit a crime. To a certain extent the existence of criminal association, likewise “mafia type”, was also noted.

At the same level of ML threat, there are also “corruption” and “fraudulent bankruptcy”, which have decreased their level of ML threat from “high” to “medium-high”.

In the 2019 NRA, “usury” and “receiving stolen property” resulted in a “medium” level of ML threat while in the 2015 NRA the “medium” level of ML threat was associated with “usury”, “betting and illegal gambling”, “offences of exploitation of immigration and illegal labour” and “drug trafficking”.

Many of these predicate offences resulted, in the 2019 NRA, in a “medium-low” level of ML threat such as: “theft”, “drug trafficking” (i.e. possession for the purpose of drug-dealing), “exploitation of prostitution”, “misuse of credit card or similar devices”, “extortion”, “exploitation of illegal migration”.

It is worth noting that some of the ML techniques indicated in the box reported below such as the deposit/withdrawal of cash, the use of bearer passbook and the frequent use of fiduciary mandates, although investigated in the period 2015-2019 as related to ML cases, they refer to transactions carried out mainly several years ago. Ad hoc measures have been adopted in the past to mitigate such issues: phrasing of bearer passbooks, provisions limiting and tracking the use of cash, FIA Instruction on omnibus account, CBSM Regulations and the establishment of the APF (“*Archivio Partecipazioni Fiduciarie*”) Register.

FOCUS ON ML FRAUD/SWINDLING
<p><i>Background information</i></p> <p>With the term swindling the following crimes are intended: swindling/fraud, here including swindling to the detriment of the Republic of San Marino or public bodies, tax evasion, unfaithful declarations due to false invoices, use and issuance of false invoices, tax fraud (the latter also committed through unfaithful declaration due to false invoices and use and issue of invoices for non-existent operations or services).</p> <p>This predicate offence, which has generated proceeds of crime relevant for ML purposes, is committed both in San Marino and abroad.</p> <p>Worth noting that swindling/tax fraud is often linked with misappropriation and bankruptcy. The so called “carousel fraud” as described in the 2015 NRA significantly decreased.</p>
<p><i>Main methods, techniques and evidences detected</i></p> <p>Based on the analysis of ML cases, the following methods/techniques have been identified:</p> <ul style="list-style-type: none"> <li>✓ the use of straw-men and foreign companies;</li> <li>✓ deposits of cash in current accounts and withdrawals from current accounts and/or by using pre-paid credit cards;</li> <li>✓ the use of fake invoices/agreements (tax fraud) aimed at justifying non-existing operations;</li> <li>✓ transfers of funds in favour of fiduciary mandates;</li> <li>✓ use of accounts managed by authorised persons (third parties with power of attorney use of illicit funds for financial investments or to guarantee loans granted by San Marino banks to foreign companies);</li> <li>✓ use of illicit funds transferred abroad to purchase real estates and to invest in life insurance policies;</li> <li>✓ the repatriation of funds through the application of the tax amnesty programme (hereinafter: VTC programme).</li> </ul>

Table 6 - Focus on ML and Fraud/Swindling

FOCUS ON ML MISAPPROPRIATION AND BANKRUPTCY
<p><i>Background information</i></p> <p>Misappropriation is the main foreign source of illicit proceeds laundered in San Marino. The misappropriation concern in</p>

## FOCUS ON ML MISAPPROPRIATION AND BANKRUPTCY

particular, corporate funds and assets.

The criminalization of self-laundering enabled to prosecute more easily a company's director diverting the funds of the directed entity to the detriment of the latter. This offence is often committed through the establishment of extra-budgetary funds by means of false invoices.

In fact, in some criminal cases, this predicate offence was linked to embezzlement by public official; swindling or tax fraud; issuing and use of false invoices; receiving stolen property; bankruptcy or fraudulent bankruptcy and theft and the ancillary offence of criminal conspiracy.

Bankruptcy is mainly foreign source of illicit proceeds laundered in San Marino and it is often identified together with misappropriation of corporate funds, swindling and the ancillary offence of criminal conspiracy.

### *Main methods, techniques and evidences detected*

Based on the analysis of ML cases, the following methods/techniques have been identified:

- ✓ the use of illicit funds to withdraw cash;
- ✓ the use of illicit funds to purchase shareholdings or share capital of San Marino companies (including financial ones) and/or for financial investment purposes;
- ✓ the use of illicit funds as collateral for a loan granted by the San Marino bank to a foreign (third) company;
- ✓ transfers of funds in favour of bearer passbooks and/or fiduciary mandates and/or current accounts held by third natural persons (also relatives of the author of the predicate offence) or companies;
- ✓ transfers of funds abroad as "loan repayments";
- ✓ the use of VTC programme for the repatriation of the illegal funds by offenders and/or third persons;
- ✓ the use of current accounts held by third natural persons (straw men) and/or foreign PEP and or foreign political movements;
- ✓ deposits of cash in current accounts or bearer passbooks;
- ✓ wire transfers to San Marino from abroad and vice versa;
- ✓ geographical discrepancy between holder of the account and Country in which the account is held;
- ✓ the use of fake invoices/agreements supporting transactions;
- ✓ the use of foreign companies;
- ✓ the presence of customers introduced by Professionals.

Table 7 - Focus on ML and Misappropriation and Bankruptcy

## FOCUS ON CRIMINAL CONSPIRACY AND MAFIA-TYPE CRIMINAL ASSOCIATION

### *Background information*

"Criminal conspiracy" and "Mafia type criminal association" mean that in some ML cases there is in place a sort of agreement between two or more persons with the aim to commit a crime. To a certain extent the existence of criminal association, likewise "mafia type", was also noted.

The offences criminal conspiracy and Mafia-type criminal association is often identified together with predicate offences and illegal activities such as swindling tax fraud, issuing and use of false invoices, misappropriation, corruption, usury, theft and receiving stolen property committed abroad. In one case, it is also linked with abusive exercise of an activity, counterfeiting and alteration of marks of intellectual works and trademarks and exploitation of illegal immigration.

### *Main methods, techniques and evidences detected*

Based on the analysis of ML cases, the following methods/techniques have been identified:

- ✓ the transfer in cash of funds in favour of accounts/ bearer passbooks/bearer certificates of deposit held by the author of the predicate offence and by his/her relatives;
- ✓ the use of VTC programme for the repatriation of the illegal funds;
- ✓ the use of illicit funds for financial investment purposes (such as "material" certificate of deposits);
- ✓ the transfer of funds in favour of foreign (shell) companies/of local companies used a "shield"/of the author of the predicate offence.

Table 8 - Focus on criminal conspiracy and mafia-type criminal association

## FOCUS ON CORRUPTION (including abuse of power) /EMBEZZLEMENT BY PUBLIC OFFICIAL

## FOCUS ON CORRUPTION (including abuse of power) /EMBEZZLEMENT BY PUBLIC OFFICIAL

### *Background information*

Corruption can be a stand-alone predicate offence but it can be linked with swindling, criminal conspiracy, abuse of authority (abuse of power) and abuse of office for private gain and embezzlement by public official.

The embezzlement by public official is linked with misappropriation.

### *Main methods, techniques and evidences detected*

Based on the analysis of ML cases, the following methods/techniques have been identified:

- ✓ the payment of the proceeds of crime through the purchase of real estate owned by straw-men/ cash deposits at bearer passbooks/ accounts held by the (corrupted) PEP and by his/her relatives;
- ✓ the transfer of funds in favour of bearer passbooks, fiduciary mandates and accounts held by PEPs and their relatives at FIs;
- ✓ the use of funds to purchase shareholdings of San Marino companies, to finance San Marino companies, to purchase real estate (both in San Marino and abroad) and to repay loans obtained;
- ✓ the use of funds for financial investment purposes (including a life insurance policy, OTC –over the counter- bonds through foreign holding companies and FFCs), for personal needs and for cash withdrawals;
- ✓ the transfer of funds in favour of a company as "repayment of shareholders loan" and "advance salary";
- ✓ the transfer of funds abroad in favour of accounts held by straw-men and by foreign companies owned by straw-men;
- ✓ geographical discrepancy between holder of the account and Country in which the account is held;
- ✓ supposed active role in the commission of criminal activity by banks' officials;
- ✓ the presence of customers introduced by foreign Professionals.

Table 9 - Focus on corruption (including abuse of power) /embezzlement by public official

### **1.2.3 HOW LAUNDERING OF PROCEEDS OF CRIME OCCURS IN SAN MARINO**

Based on 2019 NRA results, it emerges that all the “stages” of ML (i.e. placement, layering and integration) took place in San Marino. Some differences emerged in case of domestic or external origins of predicate offences:

- when the predicate offences were committed abroad, the ML activity mostly consisted in using San Marino to conceal and subsequently transfer funds abroad without integrating them (i.e. re-investing) into the national economy (placement and layering);
- when the predicate offences were committed in San Marino, the ML proceeds were mainly deposited at FIs and reinvested in financial instruments and/or used for personal needs.

The main difference with respect to the findings of the 2015 NRA, is that, with regard to the domestic predicate offences (mostly in relation to “corruption”), these were at that time reinvested in San Marino economic activities, acquisition of real estate or high value goods. Such form of “legalization” was not detected in the 2019 NRA<sup>16</sup>.

### **1.2.4 INFORMATION ON THE NATIONALITY OF THE PERSONS INVOLVED**

From the analysis carried out it emerged that ML investigations mainly foreign natural persons and foreign legal entities.

<sup>16</sup> This is mainly due to the fact that the reinvestment of illicit domestic proceeds in economic activities and in the real estate sector of San Marino has been observed only in investigations referred to dated criminal proceedings, i.e. cases deriving from excerpts of criminal proceedings already analysed (as indicted cases) in the 2015 NRA, where the predicate offence was domestic corruption.

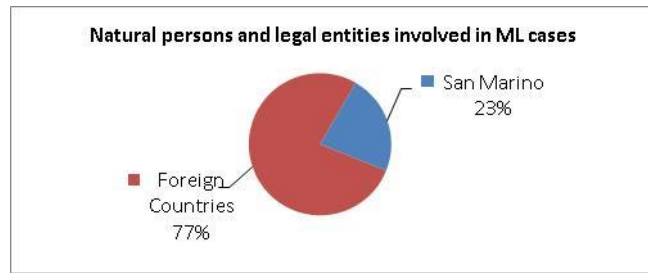


Figure 1 - Subjects involved in ML cases as at 31<sup>st</sup> July 2019

From 2015 to 2019 (as at 31<sup>st</sup> July), the 27% of ML cases investigated in San Marino involve San Marino legal entities. The total number of San Marino legal entities involved in these ML cases are 25 (mainly referred to the Consultancy sector and Trade sector, but also in events, medical/health services and FIs sectors).

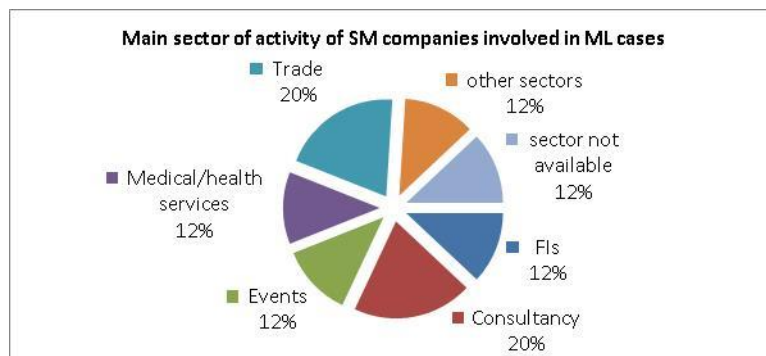


Figure 2 - Main sector of activity of SM legal entities involved in ML cases as at 31<sup>st</sup> July 2019

The no. 25 San Marino legal entities involved, have been incorporated as limited liability company (so called “SRL – *Società a Responsabilità Limitata*”) for a percentage of 72%; this is mainly due to the fact the “SRL” is the most common type of domestic company.

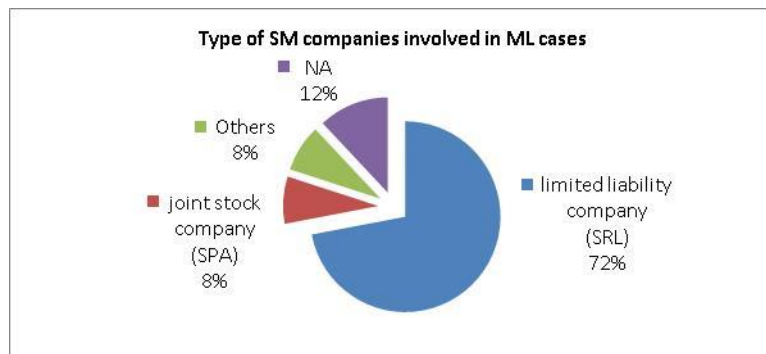


Figure 3 - Type of SM legal entities involved in ML cases as at 31<sup>st</sup> July 2019

Finally, it’s worth mentioning that the no. 25 San Marino legal entities involved in ML cases were held by foreign shareholders for a percentage of 40% (and by both San Marino and foreign shareholders for 16%).

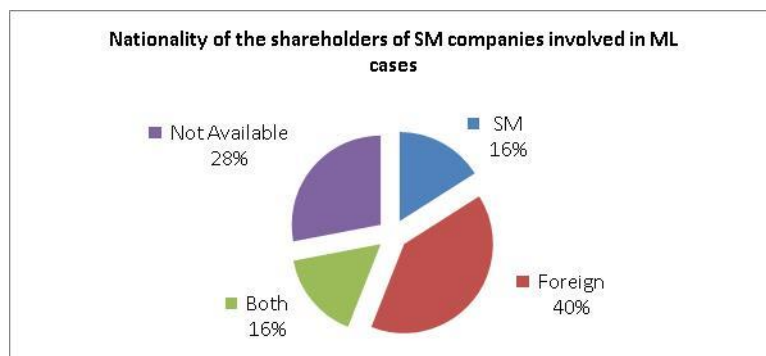


Figure 4 - Nationality of the shareholders of SM legal entities involved in ML cases as at 31<sup>st</sup> July 2019

### 1.2.5 SECTORS RESULTING MOST EXPOSED TO ML THREAT

The analysis of ML threat focused on how the proceeds are invested and laundered and in which sector this has occurred.

The table below describes the sectors which are mostly exposed to ML threat. It is worth remembering that this result does not mean that these sectors are exposed to the equivalent level of ML risk (e.g. High level of ML threat does not necessarily mean High level of ML risk).

According to the model adopted, ML risk is the combination of ML threat and ML vulnerability (for further details on the risk matrix please see Section 6). Thus, in order to detect the actual level of ML risk of the sector concerned, the level of ML threat identified must be combined with the level of ML vulnerability of the relevant sector.

SECTOR	LEVEL OF ML THREAT
Banks	High
Financial and Fiduciary Companies (FFC)	Medium
Life Insurance Companies	
Accountants	Medium-Low
Lawyers and Notaries	
Import-Export	
Dealers in Precious Metals and Stones	
Providers of services related to games of chance and gaming houses	
Other sectors <sup>17</sup>	Low <sup>18</sup>

Table 10 - Sectors most exposed to ML threat

As in the 2015 NRA, the **Banking sector** resulted as the most exposed to ML threat in the 2019 NRA, being the sector which resulted in the most ML cases although these are decreasing in the last years.

In fact, although the banking sector was found to be the most used sector in San Marino for ML, this is due to the fact that this sector is the most relevant, material and the “natural” way through which proceeds of crimes may enter in the economic and financial system of the Republic of San Marino.

The main products offered by this sector and used in ML cases are: current accounts, deposit securities and saving. These products have been used mainly to perform cash/checks deposits/withdrawals, bank transfers and for investment purposes (such as subscribe certificates of deposit, DPM - financial instruments portfolio management of financial instruments and life insurance policies, purchase and sale of shares and bonds, including bonds issued by domestic banks). Other products utilized were pre-paid credit cards, mainly used for cash withdrawals, and safe deposit boxes.

<sup>17</sup> “Other sectors” is meant the remaining categories of “obliged entities” which apply AML/CFT obligations.

<sup>18</sup> In this table “low” is meant that no information emerged in the period under assessment in relation to ML based on the sources of information detailed above.

That said, the use of collaterals constituted by illicit proceeds of crime in connection with loans emerged in the 2019 NRA. This technique is new, compared to the 2015 NRA and implies that criminals use legal funds derived from loans without the need to transfer illicit funds in the “money legalization process”.

In 2019, there are no sectors considered to be exposed to a “medium high” level of ML threat, this is because many of the sectors that in the 2015 NRA were found to be at that level of ML threat have now reduced their exposure to one or two notches.

As of in the 2019 NRA, the exposure to “medium” level of ML threat is assigned to the Financial and Fiduciary Companies (FFCs) and to the Insurance Companies. This is due to the fact that fiduciary products related to the management of securities and, in very few cases, of shares have been used to launder proceeds of crime as well as the use of life insurance products.

The *Financial and fiduciary companies (FFCs) sector* resulted in quite a number of ML cases although ML investigations concerning this sector have significantly decreased in the last years with respect to 2015 NRA. This is due, inter alia, to the transparency measures adopted by the CBSM and the FIA in relation to this sector, which proved to be less attractive for opaque transactions.

The products offered by this sector and used in ML cases are fiduciary administration of securities assets – type 1 mandate, fiduciary administration of shareholdings – type 2 mandate, fiduciary administrations of loans to third parties – type 3 mandate.

Investigations showed that type 1 mandates were mainly used to deposit cash and then transfer funds abroad (also for VTC purposes) or to deposit foreign cheques then withdrawn the amount in cash.

Such products (i.e. related sums) have also been used to obtain loans from various FIs.

The *Life insurance companies sector* resulted in ML cases as well.

It is worth mentioning that this sectors always appears in combination with the banking sector since the latter usually sale/place the insurance products to its customers .

Comparing the results of the 2015 NRA with those of the 2019 NRA, ML investigations concerning the insurance sector increased in the last years, although remaining low in absolute terms.

Investigations showed that the life insurance policy is the main (indeed the only) product offered by the related sector.

Investigations showed that the life insurance policy is mainly used to deposit securities. In some cases, related amounts (once credited on a current account) are withdrawn in cash or transferred abroad (also for VTC purposes).

The level of ML threat to which *Lawyers-Notaries, Accountants* and *“Import and Export” Sector*<sup>19</sup> are exposed, reduced of two notches in comparison to 2015 NRA (i.e. “medium high” to “medium low”). There are very few indications of active involvement of “Professionals” in ML cases; in some cases they acted as introducers of customers who resulted in ML cases.

*Dealers in precious metals and stones* and *Providers of services related to games of chance and gaming houses* were found to be exposed to a “medium low” level of ML threat due to the presence of a low number of ML cases that were either filed or still under investigation.

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<sup>19</sup> The term “Import-Export” does not refer to a real sector, but it may refer both to a real trade based ML scheme as well as to cases of transfers between commercial companies justified by fake invoices: in these cases, the foreign company carries out “foreign-to-foreign” transactions without any physical transfer (import/export) of goods in/from San Marino. Invoices are only used to justify an illegal financial operation.

The remaining categories of “obliged entities” were not involved, misused or abused of ML, based on the scrutiny of criminal proceedings, MLA and other sources of information with reference to the period under evaluation.

## 2. ML VULNERABILITIES

According to the WB Methodology used, the “National ML Vulnerability” includes:

- the “National ML Combating Ability”, that assesses 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 and
- the “Overall Sectorial ML Vulnerability”, that incorporates the ML vulnerabilities of the sectors analysed (FIs and DNFBPs sectors).

In comparison with 2015 NRA there has been a reduction in terms of ML vulnerabilities to which the Republic of San Marino is exposed due to an increase of the “National ML Combating Ability” and a decrease of the “Overall Sectorial ML Vulnerability”.

### 2.1 NATIONAL ML COMBATING ABILITY

The “National ML Combating Ability” covers several elements, among which the quality of AML/CFT policies and strategy, the robustness of legal framework to contrast ML/TF, the activities and results achieved by AML/CFT competent authorities and the level of domestic and international cooperation.

There are also relevant and structural factors (so called “Related AML/CFT factors”) supporting the country to combat ML that entered into the sphere of analysis, among which cross-border controls on movements of cash and BNIs, the level of formalization of economy, the effectiveness of tax enforcement, the level of financial integrity and the availability of independence of audit practices.

The following sections describe the main outcome of the analysis carried out.

#### 2.1.1 QUALITY OF AML POLICY AND STRATEGY

The AML strategy and policy is supported by the technical assistance of the TCNC<sup>20</sup>, which was established in 2010 and is composed by 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 plays a pro-active role in the development of the AML/CFT framework in San Marino. The meetings of the TCNC may also be attended by representatives of the CSC<sup>21</sup> (i.e. Credit and Savings Committee whose members are Ministers) in those cases where the TCNC intends to explain the activities carried out or proposes initiatives falling within the Committee's competence. The TCNC, in some cases, has also involved the private sector for some specific issues.

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<sup>20</sup> The TCNC, established pursuant art. 15 bis of the AML/CFT Law, is composed of representatives of the following public authorities: JA, the Supervisory Authority (CBSM); the FIA and LEAs. The TCNC performs the following tasks:

- coordinating the activity of AML/CFT carried out by authorities;
- reporting to the CSC referred to in Article 48, paragraph 4 of Law no. 96 of 29 June 2005 on the tasks performed;
- proposing to the CSC any useful initiative aimed at effectively preventing and combating ML/TF.

<sup>21</sup> Credit and Savings Committee (following CSC, i.e. members of the Congress of State - Government). The CSC is responsible for promoting national and International cooperation for the effective prevention and countering of money laundering and terrorist financing according to Article 48 (4), (5), (6) of the Law no. 96 of 29 June 2005.



Under Article 15bis of the AML/CFT Law, the TCNC is entrusted with the task to report 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.

The TCNC is also entrusted with the task to coordinate the activity of combating money laundering and terrorist financing carried out by competent authorities. On the impulse of TCNC the first (2015) NRA was conducted, the related action plan was drafted and its implementation was overseen.

Several actions identified in the action plan of the 2015 NRA have been executed in order to mitigate the vulnerabilities identified in that report among which:

- the updating of legislative framework in relation to terrorism and its financing;
- the transposition of the 4 AML EU Directive in the AML/CFT Law;
- the establishment of the BOs registers for legal persons and trusts;
- the Judicial Authority has cooperated with the LEAs and the FIA in order to properly tackle ML/TF cases with special attention to seizure and confiscation measures;
- the improvement of LEA's capacity to conduct proactively ML investigations on people and on offences which generate proceeds with the aim to detect funds;
- the reshaping of the supervisory model adopted by the FIA.

Finally the most material obliged entities conducted their first self-assessment of ML/TF risk.

### **2.1.2 QUALITY OF AML/CFT LEGAL FRAMEWORK**

The AML/CFT framework is based on an "all crimes" approach, e.g. an open list of willfully committed predicate offences (hence excluding negligently committed offences): Art. 199 bis of the Criminal Code applies to proceeds of any criminal offence which constitutes a felony ("misfatto"), that is, according to Article 21 of the Criminal Code, any offence committed with intent.

In relation to the effectiveness of ML Crime definition, San Marino has introduced provisions in order to implement the regulatory framework in force, by:

- introducing self-laundering on 13 August 2013;
- introducing the liability of legal person on 13 August 2013 (allowing seizure and confiscation of criminal proceeds);
- extending predicate offences by amendment to Art. 389 of the Criminal Code (felony of Tax Evasion) in 2013 and introducing specific regulations and adhering to multiple international agreements regarding piracy and terrorism;
- introducing the criminalisation of proliferation and proliferation financing with Law no. 57/2019.

As regards the effectiveness of criminal proceedings for money laundering, statistical data suggest that the reorganisation and coordination of resources within the Court and the resort to a pool of Investigating Judges in order to investigate complex cases, has made possible to define the proceedings during the investigation phase, thus reducing the disproportion between investigations and prosecutions.

The statistical data stress that progressively more severe penalties have been applied since 2010 (continuing also in the period 2015-2019).

### **2.1.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME**

As highlighted in the 2015 NRA, San Marino has introduced provisions, implementing the legal framework already in force as regards preventive seizure and asset forfeiture (also for an equivalent value confiscation). Moreover, San Marino has implemented the AML/CFT framework with provisions preserving the rights of third parties in good faith.

San Marino has introduced forms of preventive seizure and asset forfeiture (also not of a criminal law nature) after the statute of limitations has expired in order to prevent the price, product and profit of crime (both money laundering and associated predicate offence) from being reintroduced into the business circuit or legal market.

For the detection and confiscation of funds, the Criminal Judicial Authority may use all the powers provided for by the legal system. Therefore, funds may be identified, besides through the typical instruments of criminal proceedings (including testimonies, questioning, seizures), also based on asset, bank, real estate investigations, etc. Neither bank nor professional secrecy can be opposed to the Judicial Authority in accordance with the international standards and conventions. In practice, the preliminary investigation instruments envisaged by the legal system have proved to be appropriate for purpose. The time required to complete asset and bank investigations (not concerning individual positions, but in relation to any possible relationship or transaction with any obliged entity) is rather short, enabling the timely acquisition of information to block or seize funds suspected of being illicit.

Article no. 147 of the Criminal Code, as amended by Law no. 100/2013, introduced improvements concerning confiscation orders. Confiscation can be ordered also if the assets are held by third parties (however, regulations preserves the rights of third parties in good faith). Property of equivalent value can also be subject to confiscation when the direct proceeds of an offence are no longer available.

Moreover case-law introduced the principle of confiscation orders even without a prior conviction when the illicit origin has been ascertained.

Moreover, with Decree-Law no. 21/2014, San Marino set up the Asset Recovery Office (“ARO” – at National Center Bureau of Interpol) for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property.

The application practice of case law has not reported specific application problems and - according to statistical data and considering the total value of seizures and confiscation per year - there has been a general increase in the assets forfeiture.

The statistics show relevant data on seizure and confiscation (referred both to ML and to predicate offences) and the increasing trend on confiscations. With regard to the period 2015-October 2019 and in relation to ML cases, EUR 66 million have been confiscated in first instance and about EUR 25 million in appeal.

According to international statistics (i.e. Europol<sup>22</sup>), proceeds deriving from the commission of crimes would annually amount to 3.6% of the world's gross domestic product (and to nearly 1% of that of the European Union). In the latter case, the estimates of proceeds amounts to about 110 billion euros and only 1.1% of this amount is confiscated every year in the European Union. The WG evaluated that the San Marino confiscation value is largely in line with the EU and, for some years, even higher.

#### **2.1.4 COORDINATION AND COOPERATION AMONG AUTHORITIES**

Authorities (in particular Judicial Authority, the FIA and LEAs) are pursuing collaboration in order to perform a preventive function – within the context of the TCNC – in relation to the ML/TF risks identified. The latter have consequently identified the policies and the follow up initiatives. In particular, the TCNC continued to operate by acting as a pivot for setting the NRA. The TCNC also monitored the implementation of the action plan adopted after the 2015 NRA and also identified emerging issues and the strategies and policies to be adopted until the final drafting of the 2019 NRA.

Multidisciplinary investigative groups have been set up and also joint investigations have been conducted by the FIA and Police Forces upon request of the Investigating Judges.

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<sup>22</sup> [www.europol.europa.eu/newsroom/news/does-crime-still-pay](http://www.europol.europa.eu/newsroom/news/does-crime-still-pay).

Information is exchanged (spontaneously and upon request) with domestic competent authorities mainly based on MOUs. Moreover, informal meetings among domestic authorities are also organized in order to face off - at operational level - common specific topics and specific cases.

The cooperation and coordination among authorities has been considered effective.

### **2.1.5 COMPETENT AUTHORITIES FOR FINANCIAL CRIMES AND ML/TF INVESTIGATIONS**

Investigations show a constant capacity and effectiveness of financial crime investigators (in particular, the Court, the FIA and specialised teams of police forces). This is also demonstrated by the relevant number of completed investigations (mostly closed with indictment) and the number of judgements delivered.

The capacity of competent authorities to develop ML/TF investigations is constantly improving and strengthening.

Due to the cross-border nature of illegal activities whose proceeds are laundered in San Marino, the coordinating efforts by the Judicial Authority, LEAs, Interpol Office, and the FIA have led to relevant results also through enforcing international cooperation with foreign partners.

Competent authorities in charge of investigations attend training programmes by participating in events organised by third party and reputed Authorities from abroad (e.g. Foreign School of the Judiciary, foreign Police etc.).

#### **2.1.5.1 Investigative Judge**

The investigations for money laundering (and other financial crimes) and for confiscation (including value confiscation) are conducted by the same magistrate (i.e. "Law Commissioner" acting as "Investigating Judge") dealing with the proceedings.

During the investigation phase, the Investigating Judge's work consists of questioning, witness statements, expert reports, collating, acquisition of evidence, all of which may be done directly by the Investigating Judge or delegated by the latter to "*Uditori Commissariali*", to Police Forces (Gendarmerie, Fortress Guard and Civil Police) and – for some complex financial analysis – to the FIA.

With regard to the Court, the improvement of the effectiveness of its action – which began in 2014 through the reorganisation and coordination of the available resources (according to Article 16 of Law no. 100/2013), as well as through the recruitment of some "*Uditori Commissariali*" (training magistrates) – has continued during the period under assessment with reference to ML investigations and relevant financial crimes.

Pursuant to Art. 16 of Law no. 100/2013, the Head of the Court may give instructions to set up a pool of judges carrying out investigations relating to some offences (corruption and money laundering among the others) or entrusts one of the designated judges with the task of supervision and coordination of the criminal investigation. Due to the complexity of certain ML cases investigated, the resorting to a pool of Investigating Judges is becoming a more frequent practice, in order to coordinate themselves, cross-fertilize knowledge and divide tasks.

Statistical information related to the years 2015-2019 confirms the trend revealed in the previous NRA and the effectiveness of the redistribution of resources in criminal proceedings (i.e. the above mentioned reorganisation and coordination of previously available resources) and the resorting to pools of investigating judges.

Authorities are aware of the need to monitor continuously the mentioned trend, in order to adopt the necessary corrective actions in the case of an increase in the workload of the investigating judges on ML and "relevant cases".

### 2.1.5.2 Police Forces

As far as the Police Forces are concerned, each force has personnel dedicated to the investigation of ML, associated predicate offences and TF, who can also act as Judicial Police.

Police Forces have a constant and satisfactory attitude in order to perform investigations that involve parallel financial investigations to the coordinated action of the FIA.

Their commitment has undoubtedly increased since the 2015 NRA: this positive trend has emerged from the continuous meetings among authorities and from their developing cases where alleged offences may generate illicit proceeds.

A specialized group of LEAs (in particular the Anti-Fraud Squad Unit of the Civil Police) focused on corporate crimes committed in San Marino has been able to tackle illegal activities and report ML cases to the Judicial Authorities, while other LEAs have increased their investigative attitude on specific cases as well as on broader activities.

The domestic cooperation between the LEAs and with the FIA has proved to be a turning point for effective ML investigations where financial intelligence exchange and international cooperation are of fundamental competence. Seconding or liaising LEAs officers to the FIA, as already done in the past, should be considered as a good practice for the future in order to increase ML/TF knowledge on financial investigations.

### 2.1.5.3 Financial Intelligence Unit

The operational independence and autonomy of the FIA is established by the AML/CFT Law and it is applied in practice. The FIA is the national central authority in San Marino to which STRs and other disclosures are reported.

The FIA has timely access to several databases held by domestic authorities and public administration offices as well as by commercial information service providers. The San Marino FIU has been member of the Egmont Group since 2005 and is able to obtain information from all reporting entities for its analysis in a timely manner, regardless whether a report has been disseminated to the FIA.

The STR system (reporting/analysis/dissemination) works effectively and the FIA is able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities.

In particular, the FIA received 710 STRs from reporting entities during the period 1<sup>st</sup> January 2015 – 30<sup>th</sup> June 2019 (67% from banks, 9% from financial/fiduciary companies, 9% from insurance companies, 6% from accountants and 3% from lawyers and notaries). In such period, the average number of STRs per year was 158. Over the years, starting from 2013-2014 (and with the exception of 2015), the number of STRs decreased (218 STRs in 2015 and 120 STRs in 2018). The main reason for such trend is related to the decreasing number of FIs associated with the drop in number of their customers and related assets (today, the value of deposits is 40% of the value in 2008).

The share of cases opened by the FIA and disseminated to the Court is about 12%:

FIA DISSEMINATION TO THE COURT	2015	2016	2017	2018	2019 (6 months)
Cases opened by the FIA	155	151	97	80	43
Cases disseminated to the Judicial Authority	20	13	9	13	9
Cumulative % of cases disseminated to the Court	13%	11%	10%	11%	12%

Table 11– FIA dissemination to the Court

This percentage (i.e. 12%) can be considered reasonable in view of the fact that the FIA disseminates the results of financial analysis directly to the Court (without any filter by the Police).

The financial analysis is considered of high level quality and accuracy by the end-users. This enables the Judicial Authority to focus properly on ML cases.

The FIA has also implemented the strategic analysis (in force from 1st January 2017) and an electronic feedback form useful to obliged entities in order to improve the accuracy of their STRs.

### **2.1.6 INTERNATIONAL COOPERATION**

The international cooperation put in place by San Marino authorities continues to be overall efficient. The proper functioning of the system is proven by the data concerning the requests received and fulfilled and the average fulfilment time demonstrates that the legal framework, the data collection system and the resources allocated by the authorities for this purpose are still adequate.

The Judicial Authorities indicates that in the period 2015-2018, 125 MLA were received, 119 were executed totally, 2 were executed partially, 2 are pending. It indicates also that no MLA requests sent to San Marino were rejected, with the exception of 2 requests for which the request of the foreign authority was only partially granted.

The time required to process the requests for international legal assistance in money laundering matters has reduced progressively in the period under consideration.

Since August 2019, San Marino has established a contact point at the Court with Eurojust in order to improve international judicial cooperation (MLA and extradition).

With regard to the effectiveness of FIU to FIU international cooperation, in the period 2015-June 2019 the FIA received 119 requests from foreign FIUs and 21 spontaneous sharing of information. All the requests were replied and the average number of days to respond to these requests is 11 days. Moreover, the FIA during the same period sent 261 requests to foreign FIUs and 126 spontaneous sharing of information.

With regard to Law Enforcement Agencies cooperation, in the period 2015-June 2019 Interpol received 106 requests (of which 6 related to ML), none were rejected and the average time of execution is the following: 26 days (for 2015), 30 days (for 2016), 37 days (for 2017), 15 days (for 2018) and 22 days (for 2019 – six months).

In general, the international cooperation provided by the LEAs and other competent authorities in different fields is satisfactory as well as the pro-active approach by San Marino authorities in seeking for information.

### **2.1.7 AVAILABILITY OF INFORMATION FOR APPLICATION OF AML/CFT PREVENTIVE MEASURES**

In order to properly fulfil AML/CFT requirements, San Marino has established a mechanism aimed at allowing competent authorities and “obliged parties” to access to the relevant information.

Competent authorities have access to a wide range of registers held by public administration offices and by authorities in charge of holding registers (as indicated in the table provided below).

Obliged entities, in the course of the CDD procedures, acquire various information through information service providers and perform appropriate documentary checks and controls between the information found and the documents provided.

In order to facilitate access to information on beneficial ownership, San Marino adopted a mechanism that:

- requires FIs, “Professionals” and NFPs to obtain information under the CDD process on BO;
- uses information held by other competent authorities on BO and basic information on legal persons and trusts (e.g. company register, BOs register and BOs’ trust register);
- requires companies themselves to – or a Notary or Accountant in charge for – to hold the basic and BO information according to the requirements under Company Law (no. 47/2006).

In order to identify and verify the identity of the beneficial owner, obliged entities may make use of public registries, lists, deeds or documents in the public domain, containing information on the beneficial owners, and request from their customers the pertinent data and information, or obtain information in other ways. Implementing provisions are foreseen in FIA Instructions.

As set in the AML/CFT Law, companies, associations, foundations, consortia and cooperatives shall report BOs information to the Office for Industry (then replaced by OCA) for the purposes of keeping such information in a register with restricted access; for the same purposes, BO information relating to trusts shall be reported by the trustees to the Office of the Trust Register at the CBSM.

In the 2015 NRA San Marino authorities indicated that the quality of the CDD should be increased, mainly in relation to the ongoing due diligence process although information and documents were acquired from the customers; according to the result of the 2019 NRA emerged that in general CDD is carried out in a more substantial way than it was in the past.

#### FOCUS ON SOURCES OF INFORMATION

The following independent and reliable information sources are available in San Marino:

- **Register of BOs of Legal Person** is held by the OCA according to the provisions set forth under Company Law and under AML/CFT Law on BO Register (the AML/CFT Law – as amended – establishes the BO Register and regulates its data population and access to the information contained); it is accessible by Authorities (Judicial Authorities, Police Forces, the FIA, CBSM, Tax Office, CLO and obviously OCA) through a free on-line access and by obliged entities paying an administrative fee (for obliged entities, the technical development of direct on-line access is nearing completion).
- **The Register of Companies** contains basic information on legal persons such as the details of the memorandum of association, the registered office, the issued and paid-up capital stock, the corporate purpose, the personal details of the shareholders (and the percentage of shares), legal representatives, directors, auditors, independent auditors, liquidators and their relevant powers, the date of approval of the balance sheet and any subsequent change of it. As set by the Delegate Decree no. 148/2017 (ratified by the Delegate Decree no. 22/2018) the Register is now kept at the OEA in a digital format, it is public and accessible to any person, free of charge, at the OEA premises (while authorities have an electronic access). Moreover, as set under the Delegate Decree n. 118/2019, the Company Register is accessible through an on-line direct access by Professionals (Lawyers/Notaries and Accountants) and by FIs: at the date of drafting this risk assessment with reference to FIs, the technical development of direct on-line access is nearing completion.
- **Register of BOs of Trusts** is held by the CBSM and it is accessible by Authorities (Judicial Authorities, Police Forces, the FIA, CBSM, Tax Office, CLO and OCA) through a free on-line access and by obliged entities upon request and paying an administrative fee. The Trusts' BOs Register contains information on BOs and all relevant information contained in the following register (Trust Register).
- **Register of Trusts** is established at the CBSM: every trust established under Sammarinese Law has to be registered in the CBSM Trust Register (established pursuant Art. 2 of the Delegated Decree n. 50/2010). As set in the Law 42/2010, the Trust Register contains – among other information – the identification of the settlor, of the trustee, of the protector and of the beneficiaries. Pursuant to Delegated Decree no. 50/2010, it is envisaged that the Trust Register, held by the Supervisory Authority (CBSM), will not be subject to any limitations for research carried out or ordered by the Judicial Authority, the FIA and LEAs that performing the functions of judicial police. Pursuant to Art. 15 bis of Law 95/2008 (as amended by Decree-Law n. 36/2011), the CLO also has access to all information held by the Office of the trust register as well as - pursuant to Decree-Law n. 125/2015 (which ratified the Decree-Law n. 70/2015)- the Office or the Enlarged Public Sector Body, for some specified exclusive purposes. With regard to access to the information contained in the Trust Register by obliged entities, the latter may request a certification to the trustee released by the Office of the Trust Register.
- The **Trade Register** of the Economic Development Agency/Chamber of Commerce is available on-line and contains (among others) the company details updated and financial statements.

Table 12 – Focus on source of information

### 2.1.8 AML/CFT SUPERVISION

Since 2015, the FIA has partially reshaped its supervisory approach: the FIA has developed an AML/CFT Risk Based Supervision Tool with the aim of detecting the most vulnerable areas of AML/CFT also taking into consideration the results of the self-assessment on ML/TF risks conducted by obliged entities.

Overall the AML/CFT supervisory framework has been considered comprehensive. It includes supervisory policies, procedures, and manuals. The FIA's AML/CFT supervisory policy refers, inter alia, to the principles governing the supervisory activity, types of inspections, procedures for defining the annual on-site and off-site Supervisory Plan and principles for conducting inspections.

The on-site inspections have been carried out on the areas, sectors and obliged entities most at risk that have different breath and scope (i.e. general on-site Inspections, thematic on-site Inspections, targeted on-site Inspection and follow up on-site Inspections).

Subsequently, the off-site supervision has been strengthened by obtaining: periodic surveys from obliged parties in order to understand ML/TF trends and their exposures to ML/TF risks. Ad-hoc information requests are also useful to conduct on-site inspections. Moreover, information (and documents) is also requested in order to verify 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").

The FIA exercises a moral suasion and this is also proved by the acceptance and implementation of improvement requests addressed to obliged parties in the inspection reports (as a result of the supervisory activity) for the adoption of consequent corrective/mitigating measures.

The FIA has indicated that the Agency has necessary resources to ensure AML compliance (technical capacity, budget, tools, etc.) however this issue shall be taken into consideration in the light of the FIA's objectives and activities.

### **2.1.9 ENTRY AML/CFT CONTROLS**

As for the financial sector, the CBSM is the competent authority responsible for authorising all entities that intend to carry out reserved activities as defined by Law 165/2005 (authorised entities), with the general principles and rules on the overall authorisation process and fit and proper requirements for the:

- establishment of a new financial institution (authorised entity);
- acquisition of a qualifying holding in the capital company of an already authorised entity.

Compliance with good reputation requirements and with the rules of sound prudent administration are verified on shareholders and beneficial owners.

Fit and proper requirements (good reputation, professionalism and independence) are also verified for persons holding offices of administration (Board of Directors), management (General Director) or control (Board of Auditors) within authorised parties both in the above described authorisation process and for authorised parties in case of new appointments of officials.

CBSM also has an authorisation process in place for other limited entities that encompass Insurance or reinsurance intermediaries, Financial agents operating in the financial sector and Professional trustees. All of these are not authorised Entities in the strict sense of the term, as they do not carry out reserved activities according to the annex 1 of Law no. 165/2005, but they have to be authorised by CBSM to be enrolled in CBSM registers and, consequently, operate. In the authorisation process, defined by specific CBSM regulations (2007-02; 2014-01; 2010-01), the good reputation requirements are as those currently in force and applicable to bank officials.

The current legal framework is comprehensive and does not show specific breaches or lack of effectiveness, but a transition to EU fit & proper requirements (Art. 91 of Directive 2013/36, the so called CRD-IV) could be appropriate for the banking system, due to its relevance in the financial system.

The categories of Professionals and NFPs are heterogeneous. This means that some categories (i.e. "Professionals") have specific provisions governing the entrance into their sectors of activities (e.g. Lawyer-Notaries, Accountants, Auditors). Other categories are restricted by law (i.e. gaming house).

Remaining other categories (NFPs) – while not falling under a specific sectorial legislation – are subjected to controls carried out by third parties: controls by Lawyers – Notaries, when NFPs are established in the form of legal entities and controls by the OEA, when releasing the licenses.

### **2.1.10 RELATED AML/CFT FACTORS**

The following section contains contextual and structural elements present in San Marino influencing the capability to combat ML.

#### **2.1.10.1 Cross border controls**

San Marino is an enclave in Italy, there are no geographical barriers and there are numerous roads to cross the borders and a road network (Italian A14 highway) and an airport (Rimini Airport) are in the proximity of the border (the highway is just a 10 minutes' drive and the airport is just a 20 minutes' drive).

Border controls related to the movement of cash (and similar instruments) or precious metal and stones are mainly carried out by the Fortress Guard.

The legal framework<sup>23</sup> on cross-border movements of funds has been found broadly in line with the international standards and complies with the EU Regulation on these issues. Moreover, the San Marino Authorities have adopted measures, which complement these provisions and support the activities of the competent authorities in this field.

The border controls related to the movement of cash (and similar instruments) or precious metal and stones are carried out mainly by the Fortress Guard, that is the Police Force deputed to border surveillance. Moreover, specific control activities on the territory of San Marino have been performed by the Gendarmerie.

The limit on the use of cash and bearer securities set under the AML/CFT Law has been lowered to EUR 10.000 (equal to the limit related to the mandatory cross border declaration) in order to harmonize the provisions governing the use and the movement of cash in San Marino.

In order to address vulnerabilities emerged in the 2015 NRA, the FIA and the CBSM have performed a study on the use of cash for the period 2010 – 2018.

The data analysed at the FIs on cash transactions in the years 2016-2018 suggests that the cross-border movements of cash are not a relevant issue as it was in the past.

#### **2.1.10.2 Formalization of legal economy**

In the 2015 NRA there was no availability of official indicators of the level of informal economy for San Marino, although estimates were done by the WG in order to determine a perception of such level.

Nowadays San Marino is gathering specific and analytical information/data and is implementing tools to measure the informal economy (so-called "shadow economy") with appropriate indexes.

Pending the implementation of these indexes, as for the previous evaluation, updated information from offices and authorities that are involved in the prevention and combating of illicit activities linked to the economic framework of San Marino has been collected.

Moreover, information on controls and sanctions by the competent offices (OCA, Anti-Fraud Squad and Tax Office) has been gathered. These Offices and Authorities cooperate at national level by exchanging information. The analysis revealed that the San Marino authorities have carried out various activities on distortions somehow related to informal economy phenomena: the results of the activities carried out are considered good, although these should be further consolidated by supporting competent authorities in this field.

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<sup>23</sup> [Delegated Decree 19 June 2009, n. 74 as amended \(English version\)](#).



Although appropriate indexes of the informal economy are not yet available, San Marino has a legislation that encourages the development of economic activities on a formal level and ensures supervisory bodies the use of instruments for the repression of possible distortive phenomena.

#### *2.1.10.3 Effectiveness of tax enforcement*

The regulatory framework attributes to the Tax Office suitable powers and instruments in order to effectively ascertain the taxpayers compliance with their tax obligations. The direct tax reform adopted by Law 166/2013, in force as of fiscal year 2014, marked a step forward in the process of alignment of San Marino with the European legislation: the legal framework is sufficiently suitable to ensure adequate means of control and deterrent tools with regard to direct taxes, it provides for the separation of the control functions and those of assessment and entrusts the Tax Office with adequate powers in the exercise of these functions.

Law no. 173/2018 amended Law no. 166/2013, permitting – inter alia – the use of IT tools (powered by information gathered by several public administration databases) in order to detect the major risk areas (in accordance with economic, patrimonial, financial and statistical indicators useful to extract taxpayers to be checked) and to plan annually the controls on taxpayers.

After the entry into force of the Law no. 166/2013 and according to the statistics on controls carried out by the Tax Office, the new tax system could be considered quite effective.

#### *2.1.10.4 Level of financial integrity*

This variable is focused on the quality of business and professional ethics and tax transparency in San Marino (whether the country's tax framework provides for transparency of financial matters of citizens and residents and the sharing of information by the tax authorities and law enforcement agencies).

The existing regulatory framework, codes of conduct and ethical codes, organisational models and continuous training, already highlighted in the 2015 NRA (especially for professionals), are elements which increase the level of financial integrity.

Cases involving professionals (notaries, lawyers and accountants) in investigations related to money laundering, breach of money laundering legislation and other financial crimes decreased compared to the previous assessment. In addition, the number of criminal cases involving FIs' staff has considerably decreased.

During the previous assessment, numerous cases were identified where criminal proceedings initiated in relation to tax fraud or the crime of issuing and use of invoices for nonexistent transactions, while in the period 2015-2018 such cases remain although decreasing.

In the light of the decreasing number of ML criminal cases regarding Professionals and FI's staff and of cases related to tax fraud/issuing and use of invoices for nonexistent transactions, the level of financial integrity is considered to have improved.

#### *2.1.10.5 Independent Audit Practices*

As already mentioned in the 2015 NRA, FIs covered by AML/CFT Law (with the sole exception of insurance and re-insurance intermediaries and financial advisors), shall appoint by law an independent external auditor. The CBSM and Poste San Marino shall adopt auditors as well.

The activity of the auditing firm and of the independent external auditor is properly structured in the legislation of San Marino: duties and responsibilities are clearly identified and the general and specific accounting principles - that the auditor must apply - are clearly defined. The legislation provides for rotation of the independent auditors; the CBSM verifies the compliance with the legal requirements and related regulations for all authorised financial intermediaries under the Law on Companies and Banking, Financial and Insurance Services (LISF).

However, in the 2015 NRA it emerged (among other problems) that, in some cases, independent external auditors of San Marino (not being part of the international circuit of auditors) may have a limited experience. During the last years, an increased number of supervised entities decided to appoint a non-resident auditing firm (Italian) and administrative and criminal violations detected by the CBSM with reference to external auditors activity are diminishing if compared to the last NRA.

Moreover in June 2019 the parliament of San Marino issued a specific provision (Article 12) pursuant to the Bank Resolution Law (102/2019): in case of banks undergoing a resolution, the initiation of proceedings for liability of external auditors - as well as for the members of the Board of Directors and of the Board of Auditors - prohibits them for assuming or pursuing similar functions with other authorised entities subject to the supervision of CBSM.

Furthermore, it should be noted that the regulation framework related to this matter has been updated by the issuing of the CBSM Regulation no. 01/2015 which, among other things, specified in detail the tasks of external auditors in the field of supervisory reporting, helping to increase the professional requirements of the auditors.

In conclusion, due to the new provisions on sanctions regime provided by the Bank Resolution Law, the new regulatory requirements described above (CBSM Reg. 2015-01), as well as the increased number of non-resident auditing firm, the availability of independent audit practices has improved. This is confirmed by the downward trend in the number of violations ascertained and by the experience of the CBSM supervisory activities and by the information collected in the period 2015-2019.

## **2.2 OVERALL SECTORIAL ML VULNERABILITY**

The overall sectorial ML vulnerability focuses on the ML vulnerability of the persons and entities covered by AML/CFT obligations (i.e. “obliged entities”).

This has been assessed based on two pillars:

- a) the comprehensiveness of AML/CFT legal and regulatory framework, the effective implementation of AML/CFT preventive measures and the effective and “risk oriented” AML controls by the obliged entities as well as by the FIA.
- b) the ML vulnerability of products and services offered by FIs or on ML inherent vulnerabilities related to the nature of the business activity performed and/or products and services offered by “Professionals” and NFPs.

As for the first pillar, the following elements have been assessed: the comprehensiveness of the AML/CFT legal and regulatory framework, the enforcement of acts by supervisory authorities and sanctions actually imposed, the “fit and proper tests” in relation to market entry, the integrity and AML/CFT knowledge of senior managers and staff of the obliged entities, the implementation of AML/CFT preventive measures (e.g. CDD obligations, record keeping and STR reporting) and the effectiveness of internal controls.

As for the second pillar, for each of the products and services offered by FIs and “Professionals” and NFPs, the following main elements have been assessed: total size/volume, average transactions, client base profile, level of cash related to the product/service concerned, exposure to international transactions and other vulnerable factors (e.g. anonymity, traceability, non-face-to-face usage, use of agents, and existence of specific AML controls).

### **2.2.1 QUALITY AND EFFECTIVENESS OF AML/CFT CONTROLS ACROSS FIs AND DNFBPs SECTORS**

The assessment of the quality and effectiveness of AML controls has been analysed based on the presence of certain factors and their effective implementation by AML/CFT competent authorities and by obliged entities.

As already mentioned above, since the 2015 NRA there has been a general reduction of the “Overall Sectorial ML Vulnerability” due to a general reduction of the ML vulnerability attributed to each sector. In fact, there are no sectors exposed to a high level of ML vulnerability.

This is also due to several initiatives undertaken in the recent years: on the basis of the outcome of the 2015 NRA, among others, the following initiatives have been undertaken in order to reduce the level of ML vulnerability:

- specific tailor made FIA Instructions have been implemented for each category of obliged entities containing detailed AML provisions based on their business activity, although the AML legal framework was considered adequate for obliged entities;
- as already indicated above, the FIA has adopted a risk-based supervision and it has increased off-site supervision;
- in order to strengthen AML/CFT training initiatives, trainings are now required also for directors or legal representatives and for the management of FIs also for sole proprietors, directors or legal representative of companies (for NFPs) and Professionals.

These initiatives have led - directly and indirectly - to an increase in the quality of AML/CFT policies and procedures adopted by obliged entities and their knowledge of AML/CFT requirements.

Another improvement concerns the nature and types of administrative sanctions, which have been extended as a consequence of the amendment of the AML/CFT Law in 2017. These sanctions are considered sufficiently wide to positively influence management and staff behavior hence they have also had an indirect impact on level of integrity of obliged entities, which was one of the issues of the previous NRA. Despite the improvements already put in place, the nature and level of sanctions should be reviewed with the aim to establish a more proportionate, dissuasive and effective sanctions regime.

Moreover, as indicated in the 2015 NRA on the reporting system, the FIA has adopted a mechanism on feedbacks for STRs in order to increase awareness on ML/TF risks and to increase the effectiveness of the AML-CFT risk-sensitive measures for the reporting entities and persons.

#### *2.2.1.1 Financial sector*

Overall, it is worth noting that the FIs sectors were found to be affected by a lower level of ML vulnerability compared to DNFBPs sectors. Thus none of the FIs sectors were found with a high level of ML vulnerability.

This is due to several factors, among which: a more intense supervisory activity by the FIA on FIs (compared to other obliged entities) which resulted in a reduction of the level of ML vulnerability with respect to 2015 NRA and to other obliged entities.

In general, among FIs, AML knowledge, internal AML controls and reporting mechanisms have improved compared to the 2015 NRA while integrity of staff, while the obtaining a higher rating compared to previous NRA, needs further attention by the competent authorities and the private sector.

The positive assessment of the reporting system of FIs has been influenced by the increased quality of CDD, comparing the outcome of the 2015 NRA.

In the 2019 NRA, the banking sector resulted in one of the higher level of ML vulnerability among FIs. Worth specifying is that the banking sector and the FFC sector registered the most significant improvements of ML vulnerability, compared to the 2015 NRA. Thus, the level of ML vulnerability for banks reduced significantly compared to the 2015 NRA.

In particular, banks have increased the quality of AML controls for several reasons, including self-assessments, which have allowed them to understand the exposure to ML/TF risks and to set appropriate policies, procedure and internal controls. The reporting system is robust and AML/CFT Knowledge improved. As indicated above the quality of CDD improved as well. The establishment at senior level of the

AML Committee, which deals with ML/TF risks, should increase banks' capabilities to properly identify ML/TF risk and to mitigate/manage it.

The insurance sector was found to be exposed to the similar level of the ML vulnerability of the banking sector where domestic insurance companies have a higher level of ML vulnerability than insurance intermediaries.

The FFCs sector has been assessed with a lower exposure in terms of ML vulnerability compared to banks due to the structural changes that have occurred in the FFCs sector.

### **2.2.1.2 Professionals and NFPs sector**

As already mentioned, the level of ML vulnerability attributed to Professionals and the NFPs sector is higher than the level attributed to FIs, although none of them has reached a "high" level of ML vulnerability.

As previously indicated in the report, these scores are the result of the combination of the evaluation of general AML controls and of the vulnerabilities arising from the analysis of the "inherent vulnerability factors" related to the nature of the business activity performed and/or products and services offered by "Professionals" and NFPs.

In general, although there has been an improvement in terms of AML knowledge since the 2015 NRA, the awareness in terms of ML risks and the compliance with AML/CFT requirements of NFPs vary across and within different categories according to their size, business activities and services/products provided. In this regard, there is still room for improvements for which additional efforts on AML/CFT education are needed.

Auction Houses, Art Galleries and Trade in Antiques is the unique category of NFPs which has registered an increasing score in the level of ML vulnerability. Although it remained within the same-evaluation range between-the two NRAs (2015 and 2019) and the ML vulnerability level is not high, improvements are needed in terms of AML/CFT policy, procedures and internal controls.

The reporting mechanism should be strengthened for these categories of "obliged entities" although since the 2015 NRA improvements have been made in terms of quality and number of STRs received by all "Professionals" and NFPs.

The following sections provide a brief overview of the main results of each of the sectors analysed.

## **2.2.2 BANKING SECTOR**

### **2.2.2.1 AML/CFT legal and regulatory framework**

The legal and regulatory framework governing AML/CFT obligations in the banking sector is considered robust.

San Marino authorities transposed at the end of 2017 the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing into the domestic legal framework by amending the AML/CFT Law by Decree Law no. 116 of 29 September 2017 ratified by Decree Law no. 139 of 11 December 2017).

In order to properly implement such requirements, the FIA has issued ad hoc Instructions, Circulars and Guide Lines for each category of obliged entities, including banks. The FIA regulatory measures mainly focus on the following topics:

- Compliance with CDD requirements and risk-based approach;
- Fulfilment of customer due diligence requirements through third parties;
- Appointment, requirements and functions of the AML/CFT Officer;
- Registration and record-keeping requirements;

- Reporting and communication requirements;
- Corporate governance, policies, procedures, controls and training.

FIA Instructions, Circulars and Guidelines are publicly available on the FIA website.

Moreover, Circulars related to risk factors and AML/CFT trends and typologies have been provided to FIs, such as Guidelines related to the self-assessment of ML/TF risk.

### ***2.2.2.2 Supervision and enforcement actions***

Since 2015 NRA, the FIA has developed a structured AML/CFT Risk Based Supervision with the aim to detect the most vulnerable areas of AML/CFT.

In relation to banks, there is a prevalence of targeted and thematic on-site inspections as these allow banks to verify the compliance with AML/CFT requirements several times during the year and in relation to various aspects/matters with the aim to keep the sectors under ongoing AML/CFT supervision.

The result is an overall good compliance with AML/CFT requirements.

The sanctioning regime is adequate and sanctions applied are proportionate, dissuasive and effective which are applied to natural and to legal persons as well. Moreover, with recent amendments to the AML/CFT Law, the nature and types of administrative sanctions have been extended by adding other forms of sanctions however improvements might be necessary.

As for banks, the number of administrative sanctions imposed against FIs is decreasing although the number of supervisory activities remains broadly stable and violations identified and sanctioned are generally circumscribed, not widespread and not significant.

### ***2.2.2.3 Integrity and AML/CFT knowledge***

Pursuing high-level standards of integrity and promoting a good understanding of the AML/CFT obligations and risks are essential elements to reduce ML vulnerability. Maintaining the “tone from the top” and providing staff with adequate instruments and resources enable banks to reduce the risks they face and comply with the AML/CFT requirements.

Banks are providing ongoing training on AML/CFT requirements to their staff. This has increased the staff awareness of AML/CFT obligations. Fit and proper tests of shareholders, their BOs and senior managers are assessed by the CBSM in the context of prudential supervision (i.e. market entry requirements).

### ***2.2.2.4 AML/CFT preventive measures and internal controls***

The understanding of ML/TF risk in relation to business activities has been conducted by banks through dedicated self-assessment exercises.

From a substantial point of view, the quality of CDD has increased considerably, especially for banks, and this should further improve with the establishment of BOs’ registers of legal persons and arrangements.

Record keeping requirements are applied and AML electronic archives (i.e. AIA) have been implemented by banks. This permits the consolidation of information, data and proper monitoring mechanisms. No violations on record keeping emerged so far. The reporting framework is mature: obligations are well understood by banks and the quality of STRs is considered satisfactory.

The criteria used by banks to extract potential large complex and unusual transactions should be fine-tuned in order to enhance the capacity of banks to carry out detailed and in depth analysis thereof.

With regard to corporate governance of banks, the FIA has issued a detailed Instruction, which requires banks to create an AML Committee whose main task is to supervise the activities of preventing and combating ML/TF/PF, including the evasion of TFs. Moreover, specific functions and activities in relation to

the AML/CFT obligations are prescribed for the control functions of the banks. The internal controls have improved during the years, although there is still room for further improvement in terms of perimeter and depth of controls and reporting to the governance and control bodies of banks.

#### **2.2.2.5 Banking products and services**

Banks are primarily focused on retail banking, they do not offer a high range of sophisticated or diversified products, this mitigates the vulnerability of the sector.

In 2018, the incidence of the number of non-resident depositors was around 18% with a declining trend.

In San Marino, banking products are usually more vulnerable to ML than other products and services provided by other financial sectors, although their ML vulnerabilities is decreasing.

Worth specifying is that not all banking products and services have the same level of ML vulnerability due to their intrinsic characteristics and the materiality of the products used by San Marino clientele.

As previously indicated in the report on ML threat, the main banking products misused in ML cases are: current accounts, deposit securities and saving deposits. These products have been used mainly to perform cash/checks deposits/withdrawals, bank transfers and for investment purposes (such as subscribe certificates of deposit, DPM - financial instruments portfolio management and life insurance policies, purchase and sale of shares and bonds, including bonds issued by domestic banks). Other products used are pre-paid credit cards when used to withdraw cash and safe-deposit boxes.

Although the banking sector were found to be the most misused sector in San Marino for ML, this is due to the fact that this sector is the most relevant, material and the “natural” way through which proceeds of crimes may enter in the economic and financial system of the Republic of San Marino.

Based on what indicated above and because of their materiality in the banking sector, current accounts, wire transfers and cheques continue to be the core products with a higher inherent ML vulnerability, followed by loans and deposit securities.

It is worth specifying that their ML vulnerabilities decreased in comparison to the 2015 NRA for several reasons: a lower total value and size of the products analysed, the risk profile of customers improved (i.e. less risky), the volume of assets held by HNWI and foreign residents decreased significantly as well as the level of cash activities. All these factors, among others, have contributed to reduce ML vulnerabilities.

In addition to this, the assessment carried out envisaged the presence of adequate mechanisms of registering and maintaining information and data on transactions with a full set of information, which are promptly available to the competent authorities to carry out investigations. This information is retained for several years.

### **2.2.3 INSURANCE SECTOR**

#### **2.2.3.1 AML/CFT legal and regulatory framework**

The legal framework governing AML/CFT obligations for the insurance sector is the same of the banking sector; this is considered mature.

In order to properly implement such requirements, the FIA has issued ad hoc Instructions, Circulars and Guide Lines for the insurance sector. FIA Instructions, Circulars and Guidelines are publicly available on the FIA website. Insurance intermediaries have been provided with dedicated AML/CFT regulations.

Moreover, Circulars related to risk factors and AML/CFT trends and typologies have been provided to FIs, such as Guidelines related to the self-assessment of ML/TF risk.

### ***2.2.3.2 Supervision and enforcement actions***

As for banks, the risk sensitive AML/CFT supervisory activities are used for the insurance sector as well.

Based on ML/TF risks assigned, targeted and general on-site inspections were carried out in relation to the two domestic insurance companies, while targeted on-site inspections were carried out in relation to all insurance intermediaries.

On this basis, the insurance sector has been subject to a full oversight on the compliance of AML/CFT obligations and its effective implementation.

The sanctioning regime is adequate and sanctions applied are proportionate, dissuasive and effective which are applied to natural and to legal persons as well, although some improvements might be necessary. As for the insurance sector the number of administrative sanctions is low.

### ***2.2.3.3 Integrity and AML/CFT knowledge***

As indicated in the banking sector, pursuing high-level standards of integrity and promoting a good understanding of the AML/CFT obligations and risks are essential elements to reduce ML vulnerability for domestic insurance companies.

### ***2.2.3.4 AML/CFT preventive measures and internal controls***

The understanding of ML/TF risk by operators of the insurance sectors increased over years. Dedicated self-assessment exercises have been carried out by domestic insurance companies and insurance intermediaries as well.

Compliance with the AML/CFT requirements (i.e. CDD, record keeping obligations and STR reporting) improved. Insurance sector operators will further benefit from the establishment of BOs' registers of legal persons and arrangements.

With regard to corporate governance, the FIA Instruction requiring the establishment of an AML Committee also applies for domestic insurance companies. As previously indicated, its task is to oversee the activities of preventing and combating ML/TF/PF, including the evasion of TFSS.

While internal controls are detailed in the FIA Instruction for domestic insurance companies, local insurance intermediaries shall apply AML/CFT internal policies and procedures of parent foreign insurance companies. The implementation of such additional controls (which are in line with the provisions set forth in San Marino AML/CFT legislation) increases the level of compliance and effectiveness of controls in relation to this categories of obliged entities.

### ***2.2.3.5 Insurance products and services***

The insurance sector comprises of two domestic life insurance companies and some insurance intermediaries that offer foreign insurance products and services (mostly from Italian insurance companies).

Products of domestic insurance companies are usually placed by the domestic banking sector.

Comparing the results of the 2015 NRA with those of 2019, ML investigations concerning the insurance sector have also increased in the last years, although remaining low in absolute terms.

The investigations showed that the life insurance policies are mainly used to deposit securities. In some cases, related amounts (once credited on a current account) are withdrawn in cash or transferred abroad (also for VTC purposes).

Dedicated Contracts are a whole range of unit-linked life insurance policies that can only be purchased by "professional clients" as set forth in the BCSM Regulation. This product requires a single premium of a

minimum of 100 thousand euro, with the option to pay additional premiums. The performance of these contracts is related to the performance of a dedicated fund for each contract, with the option of exercising partial or total early surrender of the amount insured by the policy holder. The contract provides a capital increase in case of death of the insured. Dedicated Contracts were not to be attractive for PEPs while they were more attractive for HNWIs and non-resident customers.

Dedicated contracts cannot be sold outside the borders of San Marino. During the last six years, dedicated contracts have been mostly intermediated by domestic banks that apply AML/CFT requirements. This reduces its ML vulnerability.

Moreover, restrictions on operations under Dedicated Contracts reduce their ML vulnerability. These are subject to total and partial surrenders but payments in cash from insurance undertakings have not occurred. Gross premiums paid in cash did not occur either. Prohibiting cash payments should be foreseen by law in order to enhance the safeguards and to further reduce ML vulnerability of Dedicated Contracts.

The category "Life contracts with returns linked to the performance of an underlying financial assets" includes "whole life insurance contracts" and "other life insurance contracts". These products were not attractive for PEPs while they were more attractive for non-resident customers.

As well as for Dedicated contracts, these products, issued by San Marino insurance companies, cannot be sold outside the borders of San Marino. These are mostly intermediated by San Marino banks which apply AML/CFT requirements.

## **2.2.4 SECURITIES SECTOR**

### **2.2.4.1 AML/CFT legal and regulatory framework**

The legal framework governing AML/CFT obligations for the securities sector is the same of the banking and insurance sectors; this is considered mature and robust.

In order to properly implement such requirements, the FIA has issued ad hoc Instructions, Circulars and Guide Lines, which apply to the securities sector as well. FIA Instructions, Circulars and Guidelines are publicly available on the FIA website.

Moreover, Circulars related to risk factors and AML/CFT trends and typologies have been provided to FIs (securities sector included), such as Guidelines related to the self-assessment of ML/TF risk.

### **2.2.4.2 Supervision and enforcement actions**

The risk sensitive AML/CFT supervisory activities are focused on activities carried out by management companies as well.

It is worth specifying that the management companies are owned by local banks that act as distributors of management companies' products and services. This facilitates the application of AML/CFT obligations at financial group level.

The sanctioning regime is adequate and related sanctions are proportionate, dissuasive and effective which are applied to natural and to legal persons as well, although some improvements might be necessary.

### **2.2.4.3 Integrity and AML/CFT knowledge**

As indicated in the banking sector, pursuing high-level standards of integrity and promoting a good understanding of the AML/CFT obligations and risks are essential elements to reduce ML vulnerability for management companies.

Management companies provide training on AML/CFT obligations to their staff. This has increased the staff awareness of AML/CFT obligations. Fit and proper tests of shareholders, their BOs and senior managers are assessed by the CBSM in the context of prudential supervision (i.e. market entry requirements).



#### *2.2.4.4 AML/CFT preventive measures and internal controls*

The understanding of ML/TF risk by management companies increased over years.

The business models adopted by management companies, where only local banks distribute their products and services, foresees the access and sharing of information between FIs belonging to the same financial group. This allows a mutual benefit among obliged entities in terms of information, data and documents for CDD purposes, record keeping requirements and reporting of STRs.

Compliance with these AML/CFT requirements has improved over years.

The regulatory provisions governing corporate governance apply to the securities sector as well.

The internal controls of management companies are conducted at financial group level; this increases the quality and effectiveness of compliance for management companies.

#### *2.2.4.5 Securities sector products and services*

The San Marino MCs do not offer diversified products and the types of funds that can be subscribed in the territory of San Marino belong to the following 4 macro categories:

- Alternative Open-end Funds reserved for professional clients;
- Open-end Funds for the general public;
- Alternative Closed-end Funds reserved for professional clients (Artworks Fund);
- Alternative Closed-end Funds reserved for San Marino banks (Loans Funds).

All the Open-End Funds for the General Public invest in financial instruments, adopting a dynamic investment strategy and an investment policy in compliance with that established in the EU for "UCITS III funds". The investment policies for Funds for the General Public must comply with the criteria defined in the regulations on, for example, risk spreading, supervisory rules and acceptable investment transactions.

Generally, the portfolio of this type of fund is invested in listed financial instruments or units of foreign UCITS type investment funds. In general, there is no a high degree of complexity. Transactions such as short selling or other "sophisticated" investment strategies are not adopted. Open-ended funds for the public allow the subscription or repayment of the shares on a daily basis.

There are no evidences of misuse of the Securities sector's products and services in relation to ML threat in the period under assessment.

Based on the business model of management companies, the "direct" customers of the MCs are in fact the banks that place the funds in their own name on behalf of third parties or on the basis of a mandate.

In fact, the placement of collective investment funds to customers takes place mainly through banks. The subscription of funds directly to the MC is permitted by the management regulations, but usually only for investors that are financial intermediaries.

All the investment or disinvestment cash flows relating to settlement transactions with customers (i.e. subscription and redemption of units) and all investment or disinvestment operations carried out by Management Companies for the management of funds, are regulated through a third party, or a custodian bank, subject to AML/CFT regulations. All financial flows, both those relating to customers and those relating to transactions in the fund's portfolio are settled through accounts opened by the MC at the depositary bank. Even the operating models adopted so far by the MC establish that the placement of funds for collective investment to customers takes place through banks or other distributors and not directly at the MC.

In general, there is no a high degree of investments complexity and the San Marino management companies do not offer a particularly sophisticated or diversified range of products. This reduces the ML vulnerability of the sector.

## **2.2.5 FINANCIAL AND FIDUCIARY SECTOR**

### **2.2.5.1 AML/CFT legal and regulatory framework**

The legal framework governing AML/CFT obligations is the same of the banking, insurance and securities sectors; this is considered mature and robust.

In order to properly implement such requirements, the FIA has issued ad hoc Instructions, Circulars and Guide Lines which apply to the financial and fiduciary sector as well. FIA Instructions, Circulars and Guidelines are publicly available on the FIA website.

Moreover, Circulars related to risk factors and AML/CFT trends and typologies have been provided to FIs, such as Guidelines related to the self-assessment of ML/TF risk.

### **2.2.5.2 Supervision and enforcement actions**

Financial and fiduciary companies are subject to risk sensitive AML/CFT supervisory activity by the FIA.

There is a prevalence of targeted and thematic on-site inspections because these allow verifying the compliance with AML/CFT requirements by FFC several times during the year and in relation to various aspects/matters with the aim to keep the sectors under ongoing AML/CFT supervision.

The sanctioning regime is adequate and sanctions applied are proportionate, dissuasive and effective which are applied to natural and to legal persons as well, although some improvements might be necessary. The supervisory activities have determined violations of the AML/CFT requirements and sanctions were imposed only at the beginning of the evaluation period.

### **2.2.5.3 Integrity and AML/CFT knowledge**

As indicated in the banking sector, pursuing high-level standards of integrity and promoting a good understanding of the AML/CFT obligations and risks are essential elements to reduce ML vulnerability for financial and fiduciary companies.

Financial and fiduciary companies provide training on AML/CFT obligations to their staff. This has increased the staff awareness of AML/CFT obligations. Fit and proper tests of shareholders, their BOs and senior managers are assessed by the CBSM in the context of prudential supervision (i.e. market entry requirements).

### **2.2.5.4 AML/CFT preventive measures and internal controls**

The understanding of ML/TF risk by financial and fiduciary companies increased over years.

The compliance with these AML/CFT requirements improved over years. The regulatory provisions governing corporate governance apply to the financial and fiduciary sector as well.

The internal controls of financial and fiduciary companies are mainly conducted at financial group level, this increases the quality and effectiveness of compliance.

### **2.2.5.5 Financial and Fiduciary sector products and services**

As previously indicated in the report, the FFC sector resulted in some ML cases although ML investigations concerning this sector have significantly decreased in the last years with respect to the 2015 NRA. This is due, inter alia, to the transparency measures adopted by the CBSM and the FIA in relation to this sector which resulted to be less attractive for opaque operations.

The products offered by this sector and used in ML cases are: fiduciary administration of securities assets – type 1 mandate, fiduciary administration of shareholdings – type 2 mandate, fiduciary administrations of loans to third parties – type 3 mandate.

Investigations showed that type 1 mandates were mainly used to deposit cash and then transfer funds abroad (also for VTC purposes) or to deposit foreign cheques then withdrawn by cash.

Such products (i.e. related sums) have also been used to obtain, from different FIs, loans.

As far as ML vulnerability is concerned, on the complexity and diversity of the financial product offered there were no changes with respect to the previous period of assessment. The San Marino FFCs do not offer a particularly diversified range of products.

The inherent ML vulnerability of the sector has substantially decreased, also due to the decrease of FFCs' number and to the reduction of assets managed. Products are distributed within the domestic market even if there is a moderate portfolio of products held by foreign investors (i.e. Italian investors). In general, HNWI investors have also decreased significantly.

In the three years period under assessment the level of cash activity volumes dropped considerably than before.

In detail, leased tangible fixed assets, other forms of financing products/loans, portfolio management service and fiduciary administration of securities assets/type 2 mandate have almost halved their inherent ML vulnerability compared the 2015 NRA analysis, while the inherent ML vulnerability of fiduciary administration type 1 mandate increased slightly.

In general, there is no a high degree of product complexity and the San Marino financial companies do not offer a particularly sophisticated or diversified range of products. This reduces the ML vulnerability of the sector.

## **2.2.6 PROFESSIONALS AND NON FINANCIAL PARTIES (NFPs)**

The list of categories, other than FIs, which are subject to AML/CFT obligations is broader than the list of DNFBPs set by the FATF.

A more extensive list of obliged entities allows San Marino Authorities to have an in-depth insight of potential ML occurring in San Marino although it implies additional efforts by the Authorities to regulate and oversee and by the private sector to comply with the AML/CFT requirements.

The following sections describe the main outcome of the 2019 NRA across all categories of obliged entities.

### **2.2.6.1 AML/CFT legal and regulatory framework**

“Professionals” and NFPs are required to comply with the same legal requirements set forth by AML/CFT Law for FIs.

Based on that, tailored made Instructions, Circulars and Guidelines were issued for “Professionals” while a unique instruction has been issued for NFPs.

Beside such efforts, the FIA is recommended to further fine-tune the regulatory framework by issuing dedicated instructions for each categories of NFPs. Moreover, San Marino authorities should harmonize the notion of “professional trustee” among all relevant legislative acts.

Overall, the legal and regulatory framework governing AML/CFT obligations for these sectors is considered sound.

FIA Instructions, Circulars and Guidelines are publicly available on the FIA website.

### **2.2.6.2 Supervision and enforcement actions**

The FIA carries out its supervisory activities within a comprehensive supervisory framework, which includes clear supervision policies, procedures, and manuals.

Based on the ML risk attributed to each sector of Professionals and NFPs in the 2015 NRA, on-site inspections and off-site activities have been performed during the years under evaluation.

The categories of “Professionals” and NFPs which were found to be exposed to higher risk were subject to an intensive supervisory activity which includes off site initiatives and onsite inspections with different degree of depth.

There has been a prevalence of general on-site inspections with respect to NFPs in consideration of their limited size, structure and business activities/services.

While for Professionals there is a prevalence of thematic and targeted on-site inspections. Such approach allows to verify the level of AML/CFT compliance in relation to specific topics/matters across different persons belonging to the same category of obliged entities.

The Supervisory activity is risk oriented, properly structured, and has reached a satisfactory level of effectiveness, although some categories of obliged entities might deserve additional supervisory actions, based on the understanding of ML/TF risks by the FIA, which shall also incorporate NRA outcome.

The sanctioning regime is considered mostly adequate and sanctions applied are proportionate, dissuasive and effective and are applied to natural and to legal persons as well.

With recent amendments to the AML/CFT Law, the nature and types of administrative sanctions have been extended by adding other forms of sanctions; however the level of sanctions is considered higher than what would be expected (in particular the level of the minimum) in consideration of the limited business activities provided by these categories of obliged entities which is not comparable with the business activities carried out by the FIs. To conclude, the fact that the same level (min and max) of sanctions apply to FIs as well as to DNFBPs seems disproportionate, amendments should be considered.

### **2.2.6.3 Integrity and AML/CFT knowledge**

As previously indicated in the report, pursuing high-level standards of integrity and promoting a good understanding of the AML/CFT obligations and risks are essential elements to reduce ML vulnerability.

In general, the AML/CFT Knowledge of Professionals is considered higher than that of Non-Financial Parties: ongoing training AML/CFT events and other related seminars have been organized by Professional Associations and Bar Association. These have increased Professionals’ awareness on ML/TF risks posed to their activities and their understanding of the of AML/CFT obligations.

Quite frequently, Professionals have acted as members of Board of Directors and Board of Auditors of FIs. This means that, in order to maintain the “tone from the top” for FIs, it is necessary to maintain and if necessary to strengthen, initiatives facilitating the increase of AML/CFT knowledge and good practices in relation to integrity.

On NFPs, based on the previous 2015 NRA findings, in order to strengthen AML/CFT training initiatives, trainings are now required also to the sole proprietors, directors or legal representative of companies (for NFPs) and not only to NFPs’ staff. This allows the level of AML/CFT knowledge for NFPs to be raised.

For NFPs, the awareness in terms of ML risks and the compliance with AML/CFT requirements have increased during the latest years, although it varies across and within different sectors according to their size, business activities and services/products provided.

### **2.2.6.4 AML/CFT preventive measures and internal controls**

For Professionals a good understanding of AML/CFT requirements permits an adequate understanding of ML/TF risk arising from their business activities. Some of them have conducted individual self-assessments with the support of external consultants.

As for FIs, the quality of CDD increased considerably from a substantial point of view, and this should further improve with the establishment of the BOs' registers of legal persons and arrangements.

Moreover, Professionals (as banks do), have been using commercial database service providers in order to monitor their customers in particular they verify the presence of PEPs and the presence of their customers, BOs and delegates against UN lists, hence their client base profile controls have generally improved as well as the quality of the CDD.

The record keeping requirements are applied through electronic archives or in hard copies.

As a results of the 2015 NRA and in order to better define the framework related to the requirements of the AML/CFT Officer as well as the functions, procedures and internal controls, dedicated Instructions on AML/CFT controls have been issued for Professionals.

As for both Professionals and NFPs, the function of AML/CFT Officer may coincide with the Professional him/herself or with the holder of the obliged party given the small size of these business activities.

Thus the controls are carried out by the obliged entity itself, although it implies the lack of other level of controls (second and third lines of defence) that are in any case typical of FIs and necessary for the latter in order to guarantee an effective application of controls.

It is worth mentioning that the only gaming operator (i.e. State-owned company) has internal controls with different levels of controls and a dedicated AML/CFT Officer.

In the period under evaluation, no cases of non-compliance with reporting requirements were detected and in general, the reporting framework is robust.

STRs submitted by Professionals are sent electronically; this mechanism will be further enhanced through a secure channel of the STR-WEB online portal, as FIs already do. STRs submitted by other reporting entities (NFPs) are sent and received in electronic format (i.e. by an editable pdf standard form that is directly sent to the FIA in xml format) that includes the related supporting attachments.

Sanitized feedbacks on the formal quality of the STRs filled by the Professionals have been provided in the context of periodic training seminars.

#### **2.2.6.5 Business activities, products and services offered by Professionals and NFPs**

Professionals and NFPs' business activities are characterised by small size and by a low level of business sophistication.

##### *Lawyers and Notaries*

Referring to the professional activities carried out by Lawyers and Notaries, it is worth specifying that in San Marino, the representatives of this professional category are at the same time Lawyers and Notaries; hence they can conduct both professional activities.

According to Article 4 of the Statute of Lawyers and Notaries Association of the Republic of San Marino, the lawyer and notary public carry out their professional activities within the scope of the object, which is defined as follows:

- a. in the exercise of the duties of a Notary public, he shall give public credence to any statement or certifies that it has personally performed or taken place in his presence; therefore, for example, he receives the acts between the living and of last will, always assuming the role, in the exercise of these functions, the title of public official;
- b. in the exercise of his functions as a lawyer, he represents, assists and defends the parties in any state and degree of judgement, civil, criminal, administrative or fiscal, whether in office or not also of conciliation, which in arbitration, also carries out consultancy and assistance, both judicial and extra-

judicial, in every branch of law and may take up appointments as trustee or attorney in bankruptcy or liquidation proceedings and any other assignment judicial matter falling within its jurisdiction.

Assisting in the buying and selling of movable and immovable property, particularly in real estate, as well as services related to the incorporation of legal entities are among the most services provided by notaries which fall under the context of AML/CFT requirements.

As for the size of the category of Lawyers and Notaries, these are generally small business structures represented in the majority of cases by the Professional and by one or two collaborators, or by a few Professionals and their administrative support staff.

From the consultation of the Register of Notarial Deeds (REPE), it emerged that during 2018 Lawyers and Notaries drew up deeds related to the incorporation of companies for about 1% and deeds related to the transfer of company shares with an incidence of about 1.6% on the total number of deeds drawn up in 2018. This means that the list of activities which are related to AML/CFT obligations is, in general, marginal compared to other legal professional activities carried out by Lawyers and Notaries.

As indicated in the 2015 NRA, Lawyers and Notaries do not handle business or assets on behalf of their customers.

Moreover, it has to be noted that almost all business transactions performed are occasional transactions and the majority of their customers are resident in the Republic of San Marino.

The level of cash activity associated with the activity carried out by Lawyers and Notaries is limited.

Based on outcome of the 2015 NRA, in order to facilitate the traceability of professional activities carried out by the Lawyers and Notaries, San Marino has introduced Article 34 (paragraph 6) of the AML/CFT Law which requires, obliged entities to ensure that banking transactions concerning professional or business activities are carried out through dedicated bank accounts different from those used for personal purposes or for any other purpose different from professional or business activities.

Moreover, to the same aim, it is worth mentioning that in order to facilitate the traceability of funds and assets among parties of operations/transactions in relation to sectors relevant for San Marino (real estate and company), the AML/CFT Law has been amended. Under Article 23 bis (para5) stipulates that upon the transfer of any real estate or company shareholdings through a public deed or authenticated private agreement, Lawyers-Notaries shall obtain a specific declaration with an analytical indication of how the consideration was paid. For this purpose, a FIA Circular and Guidelines related to the acquisition of data and information on customers, proxy holders and beneficial owners have been issued.

All these measures reduce the ML vulnerability of Lawyers and Notaries.

### *Accountants*

The organisation of the profession of Accountants and Accounting Expert and regulations of the Association of Chartered Accountants and Accounting Experts of the Republic of San Marino, is provided for by Delegated Decree n. 201 of 29 December 2010 and subsequent amendments, which also includes an exhaustive list of the professional activities carried out by Accountants.

As for the size of the category of Accountants and Auditors, these are generally small business structures represented in the majority of cases by the Professional and by one or two collaborators, or by a few Professionals and their administrative support staff.

It is worth noting that in San Marino, the professional firms are made up of the Professional(s) and a small number of employees, as well as to Auditing Firms, which are a few small firms.

Accountants mainly perform their activities through the establishment of (long and lasting) business relationships with the customer. There are cases where Accountants also provide for occasional (one-off) services.

It should be noted that the majority of the Accountants' customers are resident in the Republic of San Marino.

Accountants are subject to the same limitations indicated above in terms of movements of funds, use of dedicated accounts. These reduce their ML vulnerability.

In particular, based on outcome of the 2015 NRA, in order to facilitate the traceability of professional activities carried out by Accountants, San Marino has introduced Article 34 (paragraph 6) of the AML/CFT Law which requires obliged entities to ensure that banking transactions concerning professional or business activities are carried out through dedicated bank accounts different from those used for personal purposes or for any other purpose different from professional or business activities.

While in the 2015 NRA the "active role" of a few accountants in providing "consultancy services" aimed at drafting, putting in place systems and procedures to support customers' operations in tax/fraud schemes emerged, in the 2019 NRA there are very few indications of active involvement of Accountants in ML cases.

#### *Auditing firms and Auditors*

Customers (i.e. legal persons) audited by the Auditor and Auditing Firm are mostly located in San Marino.

As indicated in the 2015 NRA, Auditors and Audit Firm, by the very nature of their business activities they neither handle assets or cash on behalf of their customers nor use cash in providing their professional services. These reduce ML vulnerability of auditing firms and auditors.

#### *Real Estate Agents*

The category of NFP includes obliged entities operating, as intermediaries, in one or more of the following areas: selling, buying and renting real estate and providing other services such as property valuation.

While all contracts of selling or buying of real estate are subject to authentication by a public Notary, the sale of real estate occurs without the intervention (in payment transactions) of a real estate agent, who does not channel the payment of the real estate.

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's identification data, banks, identification number of cheques, etc.).

To this end, under Art. 23 bis(5) of the AML/CFT Law states that "Upon the transfer of any real estate or company shareholdings through a public deed or authenticated private agreement, [Notaries] shall obtain a specific declaration with an analytical indication of how the consideration was paid, according to the specific instructions given by the Agency." In order to implement such provision, the FIA has issued specific Circular.

Real Estate Agents have established a professional association called AMAI - "Association of Real Estate Agents and Intermediaries", through which they collaborate to standardize the requirements in the field of AML/CFT and for training purposes.

When Real Estate Agents operate as self-employed persons, their activity is regulated under Law n. 125 of the 31 October 1990.

A special identification card is provided to real estate agents to carry out their activities.

Customers of Real Estate Agents are largely represented by people of San Marino and they do not use introducer business. Real Estate Agents' typical business activity is represented by occasional transactions.

The business activity of Real Estate agents occurs necessarily "face to face" as they lead their potential customers physically at the venues, in order to bring them to take vision of the sites. Some Real estate agents have a website on which it is possible to view photos and to consult data relating real estate properties for which the mediator received the assignment.

The ML vulnerability associated with this categories of NFPs is mitigated to certain constraints related to real estate market, where most of the customers are from San Marino with a "vis a vis" interaction. Moreover, payments of real estate through Real Estate Agents are not permitted and legislation requires Notaries to trace the payments in relation to Real Estate operations in public deeds or authorised payment agreements.

#### *Providers of service related to games of chance and gaming houses*

This category of NFPs is represented by a single operator that materially exercises this business activity and its capital is predominantly public. Moreover, its business - for its own nature- is not in any way comparable to casinos or other similar entities.

Casino activities (including internet casinos) are prohibited by Law in San Marino according to Art. 1 (paragraph 5) of Law No. 67 of 25 July 2000 as amended by Delegated Decree no. 169 of 28 October 2014. The only games allowed in San Marino are regulated by Delegated Decree no. 169 of 28 October 2014.

The gaming activity is considered a "small betting" size activity.

The gaming house has adopted internal practices, procedures and internal controls to identify and verify their customers' identity and IT solutions to trace purchases or exchanges of chips, which increase CDD measures and reduce the risk of misuse.

The winnings above EUR 2.000 are provided by the gaming house only through cheques issued in favor of the winner ("*non trasferibile*"), who is required to provide all the identification data and ID document before cheques are issued. This is regulated by a binding internal procedure.

The sole provider of this category does not have a website on which on-line gambling or betting are provided.

Moreover, in San Marino there are no other companies running websites on which it is possible to play games (virtual casinos, gambling, etc.). The Postal Police Service of the Gendarmerie that conducted an investigation to trace illegal operators in the sector has also reached this conclusion.

#### *Dealers in Precious Metals and Stones*

This category of NFPs largely composed of goldsmiths/jewelers. There are also a few operators engaged in the activity of buying gold and/or selling gold coins for investment purposes, or selling precious watches.

According to the outcome of the 2015 NRA, San Marino Authorities have introduced the notion of "precious metals and stones" at Art. 4 of the Technical Annex to the AML/CFT Law.

ML vulnerability associated with Jewelry and other shops selling to retail customers high values watches and other high value items is different from the ML vulnerability of "cash for gold shops".

Customers of DPMSs are mainly from San Marino but there are also foreign customers due to the touristic nature of San Marino. Their typical business activity is represented by occasional sales of high value items.

Payments by customers to DPMSs may be made in cash, although this is limited to EUR 10,000 as prescribed under Article 31 of the AML/CFT Law: sums in cash exceeding such threshold shall be



transferred through the banking system, via cheques, issued in the name of the beneficiary (“*non trasferibile*”) or via wire transfers.

#### *Other categories of NFPs*

The following list of obliged entities are not included in the FATF list of DNFBPs.

#### *Auction houses, art galleries and traders in antiques*

The activity of auction houses consists in organizing both in-house and on-line auctions, which require the retrieval of material (e.g. ancient and contemporary numismatic material for collection purposes, antiques, works of art, etc.) in general from collectors but also from private individuals.

Subsequently, the material is classified and organized into sales catalogues and finally the auction takes place, during which the material is offered for sale to customers.

These obliged entities carry out both their own activities (with assets owned by them) and on behalf of third parties, from which they receive a regular sales mandate and a commission for their role as intermediaries. Art galleries deal with trade in art objects and works of Art.

Some representatives of this category sell their “products” on behalf of third parties (transferors), from whom they have received a sale-purchase agreement hence they receive intermediation fees/commissions. The services of this category are mainly provided to foreign customers.

Auction Houses and Art Galleries and traders in antiques sell their products in most of the cases on-line through their websites or ad-hoc portals dedicated to this business activity through which they organize online auctions.

The level of cash activity associated with the activity carried out by “Auction Houses and Art Galleries and traders in antiques” is limited, having regards to the fact that their business activity is mainly conducted on-line through their websites or ad-hoc portals. Such professional activity is not considered a cash-based activity.

#### *Mutual Credit Guarantee Consortium*

There is one Credit Guarantee Consortium, which, by using the resources of members and of supporting entities, provides, on a mutual non-profit making basis, guarantees, including co-guarantees, aimed at favoring short, medium and long-term financing of the economic operators that are members of the consortium by banks and financial companies.

This consortium acts as a “bridge” between San Marino companies and banks.

Since 2013, the Consortium has guaranteed a few lines of credit. After the issuance of a guarantee, the consortium requested, in turn, a guarantee for an amount equal to the guarantee issued to the beneficiary of the loan.

The level of cash activity is irrelevant. For this business activity, there are not difficulties in tracing the transactions as the information is registered in a data sheet relating to customers’ CDD requirements.

Professional non-face-to-face services are not provided.

#### *Entities carrying out the activity of custody and transport of cash, securities or values*

There is only one representative of this category that carries out different business activities such as: surveillance activities, rental of safe deposit boxes and custody and transport of cash, securities or valuables. The AML/CFT obligations are only required for the latest two business activities.

Banks represent the main customers, which usually make use of the service of transport of cash, securities or values. Occasionally auction houses and DPMSs use their services as well. All these customers are San

Marino citizens and they are at the same time obliged entities subject to the AML/CFT Law. This reduces its ML vulnerability.

*Companies or entities established in a form other than a company, which carry out activities, not strictly reserved, similar to those carried out by entities referred to in Article 20, para 1, letter a) and c) (i.e. “other companies” ex Art. 19, letter g bis)*

In the 2015 NRA “Other companies” (Art. 19, letter g bis of the AML/CFT Law) and “Service Companies” (Art. 19, letter g ter of the AML/CFT Law) were assessed together in a wider category denominated “Assistance and advice concerning investment services and administrative, tax, financial and commercial matters”. Therefore, a comparison between the results of the 2015 NRA and the 2019 NRA is not possible.

The customers residing in San Marino are the most numerous albeit there are also customers from abroad.

Obliged entities of this category perform mainly business relationships rather than occasional transactions.

*Service companies that carry out activities supporting the professional services provided by the entities referred to in Article 20 (i.e. “service companies” ex Art. 19, letter g ter)*

Service Companies are mainly linked to Accountants as they support the accountants’ activities as a “data processing center”: in these cases the customer of these companies are the Accountants themselves. There are cases where service companies also provide their services to other customers, who are not accountants.

In profiling their customers’ risk profiles, the representatives of this sector avail themselves of the experience and know-how of (“parent”) accountants.

## **SECTION 4. TF RISK ASSESSMENT**

As previously described for the ML risk assessment, San Marino Authorities have used the WB model, which considers the TF risk as the combination of TF threat and TF vulnerability.

As a conclusion of the analysis conducted, the level of exposure to the TF risk for the Republic of San Marino is considered risible due to the very limited level of TF Threat and TF vulnerability.

The phenomenon of terrorism is nonexistent in San Marino. In fact, to date, acts of terrorism have never taken place within San Marino’s borders, and individuals or organisations that have residential, family or other social links to San Marino have never committed acts of terrorism elsewhere.

Nevertheless, San Marino has collected information and data on TF in relation to Italy and Europe in order to increase the understanding of risk arising from these areas and it has properly considered further factors in the assessment of TF risk.

Overall, the level of TF threat in San Marino is risible due to the absence of several elements among which: T/TF cases prosecuted or investigated in San Marino, domestic cross-cutting crimes, which do not contain T/TF elements, MLA and extraditions related to T/TF.

This result was also corroborated by the initiatives carried out by Gendarmerie (e.g. proactive investigations, controls on the roads and on the web).

Also the information acquired through the analysis of financial flows supports the outcome of low exposure to TF threats.

The level of TF vulnerability is very limited due to the presence of strong structural elements aimed to counter TF, among which, strong political commitment, robust CFT legal framework and good level of domestic and international cooperation which facilitates the exchange of information.

San Marino Authorities are also aware of geographical and demographical factors might facilitate the increase of TF vulnerability for which continuous efforts are needed in order to counter terrorism and terrorism financing.

## 1. TF THREAT

The assessment of the TF threat has been conducted taking into consideration the following aspects:

- the extent to which terrorism and its financing are occurring in jurisdictions which have a geographical proximity and/or political connections with San Marino (namely Italy).
- the presence of T/TF criminal cases and mutual legal assistance in relation to T/TF;
- the effectiveness of preventive measures regarding territorial controls and the effectiveness of proactive investigations related to TF conducted by competent national authorities (JA, LEAs);
- the analysis of STR related to TF carried out by the FIA;
- an analysis on financial flows (inflows and outflows) in order to analyse the exposure of San Marino to certain foreign Jurisdictions.

### 1.1 TERRORISM AND TERRORISM FINANCING THREAT OCCURRING IN SURROUNDING JURISDICTIONS

Taking into consideration that this is the first structural exercise on TF risks by San Marino, competent authorities have adopted a holistic approach by supposing that TF threats for San Marino may be linked also to other countries.

On this regard, information on domestic, regional and international terrorism and terrorism financing threats have been collected in order to identify and to collect as much as possible information on TF threats and properly assesses them for San Marino.

Italian, European and International TF threats analysis have been studied, by collecting data, information, trends and typologies on TF threats with the aim to properly assess TF threat in the context of San Marino.

To this end, documents, information and data provided by reliable sources have been scrutinized, among which there are publications, guidance and newsroom of Interpol, Europol, FATF, *Sistema di Informazione per la Sicurezza della Repubblica (Italiana)*, *Comitato di Sicurezza Finanziaria*, *Istituto per gli Studi di Politica Internazionale (ISPI)* and Kings College of London.

This information has been useful to collect domestically information and data from local authorities, public offices and private sector with the aim to detect possible TF indicators for San Marino.

All these documentations become a referral document for San Marino Competent Authorities.

### 1.2 PRESENCE OF T/TF CRIMINAL CASES AND MUTUAL LEGAL ASSISTANCE IN RELATION TO T/TF

As regards T/TF prosecutions and convictions, it has to be noted that there have been no cases of terrorist financing and terrorism in the prosecutorial practice.

The type of criminal offences committed and prosecuted in San Marino, which are related to the financing methods identified by FATF to generate revenue for terrorist organisations, have been subject to in depth scrutiny in the criminal files . On this regard, no T/TF elements have been detected.

The list of criminal offences, indicated in Europol's publication<sup>24</sup>, committed and prosecuted in San Marino revealed links neither to terrorism financing nor to terrorism.

The presence of T/TF elements has been also scrutinized in relation to MLA requests received or extradition requests. Such analysis has not determined any anomalies in terms of T/TF.

### 1.3 TERRITORIAL CONTROLS AND THE EFFECTIVENESS OF PROACTIVE INVESTIGATIONS RELATED TO TF

T/TF investigations are conducted by LEAs (in particular Gendarmerie) in cooperation with the FIA in order to activate parallel financial investigations.

LEAs and in particular the Gendarmerie and the Fortress Guard have been carrying out:

- CT territorial controls, among which, for example:
  - road checks and cross-border controls (such as road checks on people circulating in San Marino, couriers in charge of delivering goods in East Europe Countries on behalf of caregivers, etc.);
  - controls on resident population, on people coming in/going out San Marino, and on people in transit (included controls on caregivers, controls conducted by Foreigner's Office of the Gendarmerie on foreigners seeking residency permits, controls on tourist accommodations and on travel agencies etc.);
  - controls on local NPOs;
  - controls on internet web sites to detect possible terrorist activities, activities of propaganda, of proselytism and so on;
- proactive investigations have been carried out with particular focus on terrorism and its financing.

Controls on cross border movements of cash carried out by Fortress Guard and on other high value items, no elements emerged in relation to terrorism and terrorism financing.

The Gendarmerie during the latest years has been conducting territorial controls in terms of road checks on people circulating in San Marino. On this regard no T/TF elements have emerged in relation to people subject to control.

As regards territorial controls, the Gendarmerie has conducted controls on couriers in charge of delivering goods in Eastern European countries on behalf of caregivers in order to verify the presence of cash or other bearer instruments among these basic necessities.

In fact, this practice of shipping goods to Eastern countries is particularly widespread among those who provide Non-Medical assistance for the elderly (caregivers) that usually send to their native countries goods such as clothes, basic necessities (e.g. food) etc.

No T/TF elements have been detected during these controls and the presence of cash and the use of possible informal systems has not emerged (such as Hawala system). However, a person was referred to the JA for crimes not connectable to facts concerning T/TF.

Controls on foreign seeking residency permits have also been carried out as well as on tourist accommodations and on travel agencies. No element of T/TF emerged.

As regards controls on internet web sites to detect possible terrorist activities, activities of propaganda, of proselytism and so on, the "Operational and Judicial Police Unit" of the Gendarmerie (in particular through its team specialized in cyber-investigations) carries out specific controls on:

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<sup>24</sup> For example, *European Union Serious Organised Crime Threat Assessment (SOCTA 2017) – Crime in the age of technology*, European Union Agency for Law Enforcement Cooperation (Europol), 2017, p. 55

- areas of possible interest for the purposes of T/TF such as cyberterrorism, proselytism, fundraising, crowdfunding, extremism, incitement to jihad;
- through network monitoring activities that can be activated either on its own initiative or following “leaks/confidential information” received from third parties.

From checks and monitoring activities carried out, no evidence revealed the presence of extremist websites in San Marino.

#### 1.4 SUSPICIOUS TRANSACTIONS REPORTS RELATED TO TF

Although few STRs have been reported to the FIA in relation to TF, the FIA has noticed an increased understanding of FIs in terms of threat, risks and vulnerabilities related to terrorism and its financing, which is reflected concretely also in the quality and number of STRs .

The analysis of STRs for suspicious TF has been carried out by the FIA to the widest extent, acquiring information from the private sector (in particular FIs) and from domestic authorities and international counterparts. No element of TF/T emerged, so far.

#### 1.5 FINANCIAL FLOWS (INFLOWS AND OUTFLOWS) ANALYSIS

In order to assess the possible exposure to risk related to terrorism financing, a drill down analysis on the direction of funds as well as an analysis of business relationships and occasional transactions related to some Jurisdictions and regions of the world has been carried out.

The outcome of the analysis has showed that, incoming and outgoing flows from/to some Jurisdictions and regions are absolutely marginal if compared with the total amount of flows credited/debited at San Marino FIs as well as the number of customers and BOs from those Jurisdictions and regions.

Additional in depth analysis has been carried out comparing financial flows with import/export information to the extent to which this comparison is possible. It emerges that no anomalies or red flags of TF have been detected so far.

## 2. TF VULNERABILITIES

As regards the analysis of TF vulnerabilities, San Marino authorities have focused their attention on the extent to which the country has adequate measures in place to address TF. In particular, the following aspects have been analysed:

- the political commitment;
- the quality of legislation, i.e. whether the CFT legal framework is robust;
- the awareness and understanding of stakeholders on terrorism and TF risks; e.g.:
  - the extent to which, policy makers and competent authorities (e.g. LEAs, the CBSM, the FIA) have good understanding of TF;
  - the extent to which the private sector and NPOs have good understanding of TF;
- the quality of intelligence, i.e. the effectiveness of domestic cooperation on CFT;
- the adequacy of resources, i.e. technical and human resources and the extent to which there is a sufficient skill base among authorities to investigate terrorism and TF and to supervise compliance with TF requirements;
- the effectiveness of international cooperation in TF matters;
- geographic and demographic factors that may facilitate and increase the vulnerability to TF, i.e. which are the geographic and demographic factors of European and, in particular, Italian individual

terrorists<sup>25</sup> that can be compared with geographic and demographic factors of population of San Marino;

- the extent to which services or products offered by San Marino obliged entities are likely to be attractive for TF purposes. To this end the analysis conducted in the EU supranational risk assessments have been taken into consideration in order to assess their relevance for the context of San Marino.

## 2.1 POLITICAL COMMITMENT

In the last years, the political action has been aimed at developing a system, which could be capable of promptly reacting to tragic T/TF events. Indeed, despite the fact that, until today, San Marino has never been hit by terrorism, there is a clear political commitment. San Marino has adopted the necessary legislative and regulatory instruments to guarantee a safe, predictable and effective actions by JA, LEAs, the FIA and others authorities in charge of preventing, monitoring and disrupting terrorism and its financing.

Although currently there are not concrete evidences demonstrating that San Marino and its financial system have been misused for TF purposes, San Marino intends to keep a high level of scrutiny.

A “Counter Terrorism Strategy” has been elaborated and a new piece of legislation aimed at strengthening the prevention and contrast the terrorism and its financing has been proposed to the Parliament. Such legislation was adopted in January 2019, Law of 31 January 2019, n. 21 on “Establishment of bodies aimed at countering international terrorism”.

In particular, the CSC and the TCNC have identified the CTF as a priority task for San Marino. This means that “high” priority has been attributed to TF matters among which the need “*to adopt an updated legislative framework in relation to terrorism and its financing*”, “*to strengthen understanding of ML/TF risk*” and “*to establish the Commission on Combating Terrorism and Proliferation Financing*”. These actions resulted in:

- law of 31 January 2019, n. 21 on countering international terrorism;
- law of 29 March 2019 n. 57 on Targeted Financial Sanctions (TFSs);
- on-going initiatives at policy and operational levels to identify and assess ML/TF risks.

In the light of the recent events involving international terrorism - that are not marginal and that took place in not so distant areas - San Marino authorities are aware of the need to undertake an ever-increasing commitment in the prevention and fight against this threat.

For this reason, in the last decades, and more vigorously during the last 5 years several legislative initiatives have been undertaken to strengthen the institutional and framework to counter terrorism and terrorist financing.

These initiatives have been focused on the three different angles: “structuring a domestic response to terrorism threat”; “consolidating terrorism and terrorism financing criminal offences and AML/CFT preventive measures” and “reinforcing Targeted Financial Sanctions mechanism”.

To conclude, all the actions adopted demonstrate that there is a strong political commitment to contrast financing of terrorism in San Marino

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<sup>25</sup> According to the publication issued by the FIA at the end of 2018, based on international publications of competent authorities such as for e.g. FATF and Europol, the definition of “individual terrorists” includes: Foreign Terrorist Fighter, Lone Actor, Small Cell and Returnees.

## 2.2 QUALITY OF LEGISLATION

### 2.2.1 RESPONDING TO TERRORISM THREAT

The above mentioned Law no. 21 of 31 January 2019 “Establishment of bodies involved in the fight against international terrorism” has established ad-hoc bodies dedicated to the fight against international terrorism, which are:

- the Permanent Counter-Terrorism Commission;
- the Counter-Terrorism Squad;
- the Counter-Terrorism Crisis Unit.

Briefly, the Permanent Counter-Terrorism Commission is responsible for drafting the Strategy and the National Security Plan on Terrorism.

While, the Counter-Terrorism Squad defines alert levels in relation to the risk of possible terrorist threats examining the information provided by sources and mobilize the Counter-Terrorism Crisis Unit in the event of a terrorist attack

The Counter-Terrorism Crisis Unit intervenes in situations of terrorist attack or high risk of terrorist threat to coordinate its activity with that of the Organisational Units of the Administration and of private entities involved, in order to fully and effectively implement the Strategy and the National Security Plan on Terrorism.

Given the complexity and continuing mutability of the terrorism phenomenon, San Marino has decided to prepare its own strategy, in line with the principles (i.e. Prevention, Pursuit, Protection, Response) of the international community and international organisations to which San Marino adheres and in view of the dynamic approach necessary to face the problem.

### 2.2.2 TERRORISM AND TERRORISM FINANCING CRIMINAL OFFENCES

Terrorism and terrorism financing, under the domestic law, are criminalised in a manner that is fully consistent with the TF Convention and with the conventions annexed to the TF Convention.

Article 337 ter of the Criminal Code criminalizes terrorism financing.

Moreover, Article 337 bis of the Criminal Code defines and punishes the associations for the purpose of terrorism or subversion of the constitutional order offence.

In addition, several laws and the Criminal Code also set out a number of Articles which implement specific conducts of the offences described in the UN treaties annexed to the TF Convention.

For the TF crime to exist, the funding must have the purpose of funding one or more terrorist acts. The funding can be direct or made through third parties.

Under national law, it is also criminalised to finance terrorist organisations and individual terrorists on a broader basis, and without a link to a specific terrorist act or acts. Article 337 ter<sup>26</sup> of the Criminal Code establishes that the concept of “financing” of terrorism is not limited to the financing of terrorist association but it is also extended to the financing of individual terrorists.

The TF offences apply to any funds. There is no restriction in the Criminal Law or the AML/CFT Law that would indicate that funds from both legitimate and illegitimate sources are not covered.

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<sup>26</sup> According to Article 337 ter of the CC “Anyone who by any means, even through another person, receives, collects, detains, gives up, transfers or conceals funds intended to be used, in full or in part, in order to carry out one or more terrorist acts or to economically support terrorist individuals or groups, or provides them with a financial service or other connected services, shall be punished [...]”.

To conclude, the TF offences and related ancillary offences are criminalized according to international standards, although the content of the UNSCR 2178 (2014) should be immediately transposed in the legal framework.

### ***2.2.3 TARGETED FINANCIAL SANCTIONS IN RELATION TO TERRORISM AND TERRORISM FINANCING***

The overall framework which governs Targeted Financial Sanctions (TFSs) is provided by Law no. 57 of 29 March 2019, which repealed the previous regime.

Pursuant to Art. 3 and 5 of the above mentioned Law, the Committee for Restrictive Measures (CRM) has been established as the competent authority for national and international designations of individuals, groups or entities and for the consequent actions (e.g. delisting).

More in detail, the mechanism for identifying targets for designation is provided for in Art. 5, Art. 6 and Art. 9 of the same Law.

Also the procedures of de-listing from a UN list and unfreezing the funds or other assets of persons and entities designated pursuant to relevant UNSCR resolutions are governed by Law no. 57/2019. These procedures apply to all relevant UNSCR resolutions, in order to submit the requests to the relative sanctions Committees.

The fundamental building blocks of the preventive measures on TFSs have been introduced in the San Marino AML/CFT framework.

## **2.3 AWARENESS AND UNDERSTANDING OF RISKS OF STAKEHOLDERS ON TERRORISM AND ITS FINANCING**

### ***2.3.1 THE EXTENT TO WHICH COMPETENT AUTHORITIES HAVE GOOD UNDERSTANDING OF T/TF***

San Marino gives essential importance to the training of the personnel responsible for preventing and combating crime, as it believes that the constant updating of the authorities involved constitutes an aspect of fundamental importance for the work of prevention to be effective. Even more so, this profile assumes importance in terms of terrorism, since it is a complex phenomenon, constantly changing and of a transnational nature.

In order to be able to dispose of adequately prepared police forces, both in terms of knowledge of the phenomenon and in terms of the ability to respond to it, San Marino has given rise to forms of cooperation in the territory and abroad. From the first point of view, training programs have been conducted thanks to the contribution provided by national institutions, such as the University of San Marino, the Magistracy, the State Secretaries and the FIA. With respect to foreign commitments, San Marino promotes and participates, among other things, in updating and training courses in collaboration with various Italian and foreign institutions and bodies (such as Universities, Advanced Training Colleges, Embassies), thanks to specific police cooperation agreements.

Training courses domestically and abroad have been attended also by the SM magistrates in order to improve their know-how such as those seminars organized by the Italian Highest School for Magistrate and another seminar concerning Subversion or Terrorism Offences with the support of the European Union.

LEAs and in particular the Gendarmerie have attended specific courses related to TF/T in order to increase their knowledge on TF/T and improve their capability to conduct more effective T and TF related investigations. More in detail the police officers of the Gendarmerie, responsible for the investigations, have attended specific courses both in San Marino and abroad.

In the last years the FIA has been putting more attention on TF, in fact it has attended specific courses in terms of TF/PF to raise its understanding and awareness in terms of TF risks.



To conclude, there is a continuous and increasing focus on terrorism and its financing demonstrated by training activities attended by competent authorities, which have led to an improvement in the understanding of these risks.

### **2.3.2 THE EXTENT TO WHICH PRIVATE SECTOR AND NPOs HAVE GOOD UNDERSTANDING OF T/TF**

Since the adoption of the 2015 NRA, the San Marino authorities have suggested to activate a more proactive dialogue in order to raise their awareness of TF risks and vulnerabilities. This has led to various forms of initiatives such as for example:

- on NPOs, seminars addressed to all Associations and Foundations have been organized. During such events, information has been provided on misuse of NPOs by terrorism financing;
- as for all obliged entities, the adoption of a mechanism on feedbacks for STRs in order to increase awareness on ML/TF risks and to increase effectiveness of the AML-CFT risk-sensitive measures for the reporting entities and persons (FIs, “Professionals” and NFPs);
- the issuing of periodic newsletters on ML/TF risks, trends and typologies;
- the issuing of specific tailor-made publications edited by the FIA regarding TF, PF and the possible misuse of NPOs. These publications have been drawn up by reporting information useful to read in advance possible anomalies in San Marino related to these matters;
- the organisation of a specific training session to give FIs practical schemes, trends and typologies tailor-made on their activity and to promote an extensive understanding on TF risks.

To sum up, the private sector (which includes also NPOs) has been improving its awareness in terms of T/TF.

### **2.4 QUALITY OF INTELLIGENCE**

First it has to be taken in consideration that the AML/CFT system is based on collaboration and cooperation between national and international authorities. The private sector contribution is fundamental as well.

National and international cooperation has been assessed as overall efficient. The proper functioning of the system is proven by the data concerning the requests received and fulfilled (no requests, indeed, have been rejected), and the average fulfilment time demonstrates that the legal framework, the data collection system and the resources allocated by the authorities for this purpose are adequate.

The authorities involved in generating and using financial intelligence and other relevant information for the purposes of ML, predicate offences and TF are mainly the FIA, the Judicial Authority and LEAs.

In particular, the FIA is the authority responsible for receiving, analyzing and disseminating STRs submitted by the obliged entities and can also initiate financial analysis following its own findings, foreign FIUs notes/requests or upon information received by third parties.

Moreover, considering the small size of the Country, the FIA plays a central role in generating financial intelligence and the Judicial Authority is the institutional recipient of the dissemination process in case the FIA – as a result of the financial analysis conducted – detects facts that might constitute ML offence, predicate offences or TF.

However, as already said, if the information reported (to) and analysed (by) the FIA might be of possible interest also to other authorities, it can be disseminated through detailed spontaneous information notes.

On the other hand the FIA can be required to conduct financial analysis whenever there are evidences of a financial nature in investigations carried out by the Gendarmerie related to possible T/TF matters.

No T/TF request/spontaneous notes have been submitted to the FIA in relation to suspicious individuals/legal entities or arrangements linked with the Republic of San Marino. San Marino has promptly

provided assistance to foreign FIUs which have sent T/TF “fishing requests” in order to verify both the presence (or not) of the natural and legal persons requested in the FIA databases and in the San Marino financial system (in particular, the existence of any business relationship or transaction). No T/TF elements have been detected so far.

## 2.5 ADEQUACY OF RESOURCES (HUMAN AND TECHNICAL)

Since the phenomena of organized criminality and transnational terrorism are constantly evolving, the info/investigative approach to prevention and contrast requires continuous updates in terms of human and instrumental resources.

In consideration of the T/TF threats which has been evaluated as low, human resources dedicated to investigations and financial analysis are considered adequate.

As indicated in the National Strategy (which includes the National Security Plan on Terrorism) San Marino is working to complete a database common to all the LEAs, thus providing a significant added value to the activity of fighting and preventing terrorism.

Competent authorities are evaluating the possibility of acquiring innovative technological and digital equipment. In fact, the acquisition of a “*webint software*” to investigate the cybernetic space (cyber-intelligence), as well as mobile document readers, devices that make it possible to decipher the data contained in the microchips or in the magnetic bands of the identity documents, are strategic to improve controls carried out by LEAs. In addition, it is necessary to continue with the implementation of the video surveillance system of the territory, through the installation of additional cameras and more performing equipment in the area.

## 2.6 GEOGRAPHIC AND DEMOGRAPHIC FACTORS OF INDIVIDUAL TERRORISTS

Being aware of the T/TF risk posed by individual terrorism (e.g. FTF, returnee, lone actors, small cells), having regard to the information provided by reliable sources of information on individual terrorists profiles, the San Marino Authorities have used this information for in depth scrutiny in relation to residency permits, working permits and in general the overall pictures on nationalities living in the Country.

Information and data on revoked or refused residency permits, removals, expulsions and extraditions have been properly analysed by San Marino Authorities. No cases of T/TF have been detected.

## 2.7 SECTORS AND PRODUCTS MOST VULNERABLE IN TERMS OF TF

Based on Supranational Risk Assessment conducted by the EU, on literatures and on reliable sources of information, certain sectors, products, services and delivery channels are more abused than others in relation to TF.

For this reason, San Marino Authorities have conducted initiatives focusing on those issues that were more likely to be related to San Marino in the context of TF: NPOs, cash products, wire transfers and pre-paid cards.

On the NPOs sector, the analysis carried out by the competent authorities have highlighted that 1.2% (5 out of 403) of San Marino NPOs were found to fall within the FATF definition of NPOs at risk. These NPOs carry out fundraising activities as a priority (in some cases the only activity), with different methods, which are then used for charitable activities, mainly abroad.

Competent authorities have therefore carried out further inquiries, according to which these NPOs have demonstrated to have good AML/CFT safeguards; hence NPOs are currently exposed to a low level of TF risk.

In San Marino, as already explained above, the cross border business has a limited incidence on the evaluation of TF risk. The relevant number of cross border controls have not detected any significant

violation related to cross-border declaration. Moreover, San Marino authorities (the FIA and CBSM) have conducted a cash study in order to detect whether cash transactions (for a total amount exceeding € 10,000 or the equivalent value) were related to cross border activities of non – resident customers. As a result, any relevant cross border activities related to non – resident customers have been detected.

Transfer of funds and deposits on accounts. San Marino authorities have conducted in depth analysis on the product “wire transfer” provided by banks. Albeit its consistent use, there are no evidences that support this product has been used for TF purposes. On this regard it should be noted that transfers are also provided by San Marino Poste through the “Eurogiro circuit” but only from/to certain countries and for limited amounts. The statistics show that the use of this product is risible and there are no evidences of possible misuse for TF purposes.

Also pre-paid credit cards may be exposed to possible misuse. Despite volumes of cash used to recharge cards increased over the period under assessment, the majority of credit and debit cards are held by residents.

With regard to banknotes, specific checks are envisaged on the origin of the funds in the case of banking transactions above the threshold of € 2,500.00 which contain at least one apical banknote (500-200 euros). In such cases, banks have set up specific controls and adequate verification operations in relation to the sources of funds. No TF evidences have been detected.

## **SECTION 5. CROSS CUTTING SECTORS AND PRODUCTS**

### **1. THE USE OF CASH IN THE REPUBLIC OF SAN MARINO**

#### **1.1 SUPRANATIONAL RISK ASSESSMENT OUTCOME IN RELATION TO CASH**

It is important for San Marino, which is surrounded by Italy, to consider in relation to cash the main outcome of the risk assessments carried out at European level, with the aim to have a broader view on the main threats related to cash. This is also useful to compare the measures adopted in San Marino with those adopted in the surrounding Euro Area.

The EU assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities of 2019<sup>27</sup> covers the issue of (misuse of) cash.

According to EU, LEAs’ findings show that, while cash is falling out of favour among consumers (due to the use of new payment instruments as credit cards, debit cards and wire transfers), it remains criminals’ ML instrument of choice as they can use cash to transfer funds rapidly from one location to another, without being traced. In general, on the basis of statistics on STRs transmitted to the EU FIUs, the use of cash is the main trigger for the filing of suspicious transaction reports.

Criminals who accumulate cash proceeds seek to move them to locations where they can more easily be integrated into the legal economy, i.e. those characterised by predominant use of cash, lax supervision of the financial system and strong bank secrecy regulations which limits the international cooperation.

Moreover, criminals try to avoid leaving an information trail and to remain undetected. Sectors with a high level of cash transactions are considered particularly at risk, for example traders in goods and services

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<sup>27</sup> [https://ec.europa.eu/info/sites/info/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union.pdf](https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf)

accepting payments in cash and economic operators accepting payments in large-value denominations, such as EUR 500<sup>28</sup> and EUR 200 banknotes.

## 1.2 THE MAIN OUTCOME ON CASH TRANSACTIONS CARRIED OUT IN SAN MARINO

The study has been conducted by the FIA and CBSM has the main objective to analyze information and data related to cash operations carried out at the FIs operating in San Marino.

The main outcome of such analysis is that there is a continuing decline in the number and amount of cash operations.

This supports the idea that the overall exposure of ML/TF risk of San Marino in relation to cash is declining.

The study also indicates that the possible misuse by foreign customers in relation to cash operations is reducing over time and the fact that San Marino banking sector has been reducing its appetite to foreign customers, who wish to deposit cash.

## 1.3 SAN MARINO MITIGATING MEASURES IN RELATION TO CASH

The following section describes the main pillars, which constitute defenses by San Marino Authorities in the misuse of cash.

### 1.3.1 CROSS BORDER MOVEMENTS OF CASH

As previously indicated in the report, the above mentioned legal framework on cross-border movements of funds has been assessed broadly in line with the international standards and complies with the EU Regulation on these issues. Moreover, CBSM and FIA have adopted measures, which complement these provisions and support the activities of Police forces in this field.

At EU level, it is worth noting that the revised Cash Controls Regulation<sup>29</sup> applicable from 3 June 2021 extends the obligation of any traveler entering or leaving the EU and carrying cash to a value of EUR 10,000 or more to declare it to the customs authorities. It also extends the definition of cash, to cover not only banknotes but also other instruments or highly liquid commodities, such as cheques, traveler's cheques, prepaid cards and gold.

This Regulation should be implemented by San Marino as well, in due time according to the timelines set forth in the context of the Monetary Agreement with the EU, in order to continue on the virtuous path of aligning San Marino legislation with that of the European Union on the prevention and contrast of ML and TF.

### 1.3.2 RESTRICTING PAYMENTS IN CASH

Although there is currently no legislation at EU level restricting payments in cash<sup>30</sup>, the relevant EU legal framework has been strengthened.

The 4<sup>th</sup> AML UE Directive has included traders of goods who make or receive cash payments of EUR 10,000 or more. Moreover, Member States can adopt lower thresholds, additional general restrictions on the use of cash and stricter provisions.

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<sup>28</sup> The European Central Bank has decided to discontinue production and issuance of €500 banknote <https://www.ecb.europa.eu/press/pr/date/2016/html/pr160504.en.html>.

<sup>29</sup> Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.

<sup>30</sup> Report from the Commission to the European Parliament and the Council on restrictions on payments in cash of 2018.

Moreover, a majority of EU Member States have cash payment restrictions. These restrictions vary from thresholds of EUR 500 to EUR 15.000. These measures are rather heterogeneous, with differences with regard to the type of measures, thresholds, and coverage. It must also be observed that the number of EU Member States with cash payments restrictions has increased rapidly in recent years, from 4 in 2008 to 17 in September 2017.

That report, according to the outcome of the SNRA, concluded that restrictions on cash payments would not significantly address TF, although preliminary findings also indicated that prohibition of high value cash payments in cash could positively impact the fight against ML.<sup>31</sup>

In San Marino, the AML/CFT framework foresees for the limitation in cash transactions: the transfer between different parties of cash and bearer securities, when the value of the transaction, even fractioned, is equal to or higher than EUR 10,000, shall be exclusively carried out through an entity authorised to exercise the reserved activities mentioned in letter A), of Annex 1 to Law 165 of 17 November 2005 and in Article 18, paragraph 1, letter b).

According to Article 32 of the AML/CFT Law, obliged entities when they discover violations of that provision (Article 31 of the AML/CFT Law) in the exercise of their activities shall immediately inform the Agency thereof.

### **1.3.3 MANDATORY OBLIGATION TO TRACE CERTAIN TRANSACTIONS**

As detailed above, based on the outcome of the 2015 NRA, it is worth mentioning that in order to facilitate the traceability of funds and assets among parties involved in operations/transactions in relation to sectors relevant for San Marino (real estate and company), the AML/CFT Law has been amended with the provisions set forth under Article 23 bis (para5) which stipulates that upon the transfer of any real estate or company shareholdings through a public deed or authenticated private agreement, Lawyers-Notaries shall obtain a specific declaration with an analytical indication of how the consideration was paid. As indicated earlier in the report, in order to full implement such provision, the FIA has issued a specific Circular.

### **1.3.4 MANDATORY USE OF CURRENT ACCOUNTS FOR BUSINESS ACTIVITIES**

As described previously in the report, in the light of the outcome of 2015 NRA, in order to facilitate the traceability of business activities carried out by obliged entities, San Marino has introduced Article 34 (paragraph 6) of the AML/CFT Law which requires obliged entities to ensure that the banking transactions concerning professional or business activities are carried out through dedicated bank accounts different from those used for personal purposes or for any other purpose different from professional or business activities.

This measure limits the misuse of cash and permits the traceability of business activities.

### **1.3.5 MONITORING ACTIVITIES ON CASH TRANSACTIONS**

The CBSM has issued a specific reporting mechanism (CBSM Circular 2012-01), which requires banks to report to the CBSM total amount of withdrawals and cash deposits on current accounts made by customers above the threshold of 15.000 euros. This information is shared, upon request, with the FIA.

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<sup>31</sup> COM(2018) 483 final.

### 1.3.6 SUPERVISORY AND REGULATORY ACTIVITIES IN RELATION TO CASH OPERATIONS

In recent years the FIA has paid attention to the transactions carried out by customers through the use of cash given the nature of money that is difficult to trace and can be used to carry out illegal operations.

Over the years, the FIA carried out multiple supervisory activities: analysis of information, data and documents at the obliged entities premises as well as offsite requests of information (i.e. Cash survey).

Off-site initiatives were carried out with the aim to collect as much as detailed information as possible in relation to cash operations so as to have an in-depth view of the operations and the customers involved in these transactions. The idea is to narrowing the data collection to properly perform onsite inspections and at the same time maintaining detailed information on the banking sector in relation to cash activities.

Onsite inspections have been carried out with the aim to verify the correct application of record keeping obligations (in relation to IT Systems and AIA Archives) as well as the correct application of CDD requirements and risk profiles of the customers.

To this end, the information collected by the CBSM via (its) Circular 2012-01 was considered valuable.

The use of such reporting has permitted to the FIA to narrow down the list of customers who had performed cash operations, which deserved onsite scrutiny. For example, cash intensive business activities, geographical elements, amount and frequency of cash operations were some of the factors used to select operations.

The outcome, which emerged from supervisory activities, is that banks have internal policies that govern the management of cash transactions, the internal controls on cash operations and authorisation processes above a certain threshold.

In addition, banks are provided with specific controls for cash transactions, which are subjected to mandatory in-depth analysis (as provided by FIA Instruction no. 002/2018 – FI Series) when the cash operation exceeds a certain threshold (above the threshold of € 2,500) and in the presence of top-cuts.

To conclude, regardless the declining trends in the use of cash in the banking sector of San Marino and the presence of restrictive measures as well as of control, monitoring and supervisory activities by competent authorities, there is a need to continue work to avoid the misuse of cash that might likely to be connected to ML, TF or, in general, represent the proceeds of crimes.

## 2. ASSESSEMENT OF NPOS

The NPOs sector consists of the following entities: Associations, Foundations and Ecclesiastic Entities.

The main provisions governing the NPOs sector are the following: Associations are governed by Law 16 June 2016 n.75; Foundations are governed by Law of 1st July 2015 n.101. Ecclesiastic Entities are recognized under San Marino and the Holy See Agreement of 1992 (“*Concordato*”).

The legislative framework also obliges Associations and Foundations to require authorization to OCA when performing certain transactions/operations among which provisions limiting the use of cash.

Ad hoc legislative measures in relation to the prevention of ML/TF have been enacted, such as Article 37 of the Law 129/2010 and Decisions of the Congress of State. These also resulted in the signature of MOU between the Council of Twelve, the Judge of Supervision of the NPOs and the FIA and in the adoption of measures which go from the voluntary measures (voluntary liquidation) to mandatory actions (winding up and cancellation of entities) towards those NPOs which not complied with the legal obligations.

The authority responsible for controlling the NPO sector is the Office for Control Activities.

San Marino authorities have carried out an in-depth survey of the NPO sector with the aim to evaluate the ML/TF risk exposure of this sector and to identify, as precisely as possible, those entities which could be classified as "non-profit organisations" according to the definitions of the FATF.

From the analysis carried out, of the 403 non-profit organisations, 5 NPOs were found to fall within the FATF definition of NPOs at risk, while 31 associations were the subject of further analysis because, although they are not properly considered NPOs at risk, they carry out fundraising/paying funds on an occasional basis and mainly at local level.

In the five-year period 2015-2019 there were no reports of suspicious transactions or criminal proceedings and rogatory requests concerning San Marino NPOs. Then there were no cases of false non-profit organisations or cases of fundraising with fraudulent intent. Nevertheless, the FIA has issued a dedicated NPOs document in relation to the possible misuse of NPO in the context of terrorism financing.

As a result of the map analyses, and subsequently also through special meetings or contacts, it was possible to identify two categories of entities:

- the first category, which contains the list of NPOs that meet the criteria set forth by the FATF definition. These NPOs carry out fundraising activities as a priority (in some cases the only activity), with different methods, which are then used for charitable activities, mainly abroad;
- the second category, which includes those NPOs which, although not carrying out fundraising / paying funds as a priority, have nevertheless activated, over the years, occasional initiatives with charitable purposes in relation to specifically identified entities or projects, even when they are addressed to entities resident in San Marino.

The first category is composed of no. 5 NPOs. The second category amounts to no. 31. The latter also includes those Ecclesiastic Entities and other religious organisations (essentially Parishes) whose fundraising (through the acquisition of offers during religious rites) is mainly destined to the competent "Offices" of the Catholic Church of Rome, which provide for their use and distribution.

Following the identification of the specific entities of interest, the competent authorities have therefore carried out further inquiries, using a gradual approach, depending on the risk on the NPOs identified at risk.

As a result of the meetings, it was ascertained that San Marino NPOs have demonstrated:

- the existence of organisational structures suited to their activities;
- the ability to keep track (and therefore record) in an analytical manner of all economic and financial activities carried out;
- the publicity and transparency of its initiatives and organisation through various media;
- the total amount of funds collected and disbursed annually, which is substantially not relevant;
- the use of San Marino professionals for the preparation of the financial statements/prospects and/or for the solution of any problems of a legal nature, as a further guarantee of the control and consistency of the management of the funds with the aims and objectives of the NPO;
- the largely predominant use of banking channels for the transfer of sums to recipients;
- the use of persons of full confidence of the institution for the management of projects on site (abroad) and the possible and residual transfer of small amounts of cash to the recipients;
- a good knowledge of the donors, the persons receiving the sums and the periodic control (also by means of on-site missions) of their use (in essence, if the sums are used for the intended purposes);
- a more than good awareness and understanding of the risks of money laundering, and even more of terrorist financing, to which they are abstractly exposed.

In essence, it has been ascertained - and conversely it can be reasonably stated - that the NPOs of San Marino are currently exposed to a low risk of money laundering and terrorist financing and that, on the contrary, the activities carried out by the latter deserve the highest consideration, also in light of the strong transparency and control measures adopted.

As part of the general review of the NPO sector, the competent authorities also examined the existing legislation and regulations, as well as the general framework of controls.

At the same time, given the relative smallness of the territory, the competent authorities of San Marino have intervened in terms of awareness raising, data control and the activation of a more intense collaboration between public administration and non-profit entities. Such a flexible and direct approach makes it possible to undertake focused and effective measures and to keep up with the dynamic nature of the terrorist threat.

The FIA has also issued a dedicated NPOs document in relation to the possible misuse of NPO in the context of terrorism financing. This document transposes into Italian language the main key-points contained in the FATF documents in relation to this topic, having regards to the characteristic of the San Marino NPO sector.

Although the surveying work carried out on the NPO sector in San Marino has led to the conclusion that the risk of abuse for terrorist purposes is presumably low, considering the characteristics and operations of San Marino NPOs, the San Marino authorities have nevertheless identified some intervention measures to protect the sector from the risk of terrorist financing abuse.

In addition to a supervisory action based on risk, further measures envisage:

- the introduction of legislative amendments to Law No. 75 of 16 June 2016, aimed at providing specific provisions regarding NPOs that fall under the FATF definition;
- the strengthening of cooperation between national authorities;
- increasing the number of awareness raising events for NPOs on the risks of terrorist financing;
- supporting the activities of NPOs with international best practices.

### **3. ASSESSEMENT OF LEGAL ENTITIES**

#### **3.1 LEGAL FRAMEWORK**

Companies and partnerships - established under San Marino legislation - are governed by Law 23 February 2006, n. 47. This law has been amended several times over years.

Cooperatives have a dedicated law (Law 149/1991) as well as Consortia that are governed by Law 42/1977, amended by Law 27/1986 and later by Decree Law 107/2012.

Legal entities shall also obtain licenses according to Law n. 40, 31 march 2014.

There is also legislation which facilitates the establishment of “high technologies” start-up companies by Delegated Decree n 116/2014. San Marino has also adopted a legislation in relation to “blockchain entities” better described below.

#### **3.2 INFORMATION LEGAL ENTITIES OPERATING IN SAN MARINO**

The 2019 NRA provides information on legal entities operating in San Marino, including detailed information on shareholders/BOs nationalities/residency and their modalities, through which, the control is exercised. Information was scrutinized based on information held by the Register of Companies and BO Register.

This information has represented a valuable source of intelligence in order to determine the nationalities and places of residence to which San Marino legal persons result to be more attractive and to understand the level of sophistication or transparency/opacity related to the San Marino legal entities.

Based on the findings of San Marino Authorities, it was found that almost all the companies operating in San Marino have shareholders who are the ultimate beneficial owners of the companies as well. This means that the level of transparency in most cases is considered relevant.



Very few cases are related to persons, whose nationalities are not that a San Marino or are from the neighboring Country.

### 3.3 MISUSE OF SAN MARINO LEGAL ENTITIES

The 2019 NRA provides detailed information on the misuse of legal persons in relation to ML cases, among which, the number of ML cases concerned, sectors and business activities carried out, type of legal persons and nationality of shareholders.

Consultancy, trade, public events, medical/health care are some of the sector/business activities which resulted in a predominantly misuse for ML while limited liability companies (SRL) were found to be the type and form of company mostly misused for ML purposes.

As described in the analysis of ML threat, “corporate crimes” are the most relevant predicate offence committed in San Marino and abroad whose funds have been laundered in the Country.

Moreover, Swindling/Fraud (including tax evasion, tax fraud, the issuance and use of false invoices and unfaithful declaration due to false invoices) was detected as one of the main predicate offences generating proceeds of crimes committed in San Marino.

### 3.4 ACTIONS TAKEN BY SAN MARINO COMPETENT AUTHORITIES

Among the Police Forces, the Anti-fraud Squad of the Civil Police has played a significant role in carrying out financial investigations on San Marino Legal Entities.

In particular, during its controls on domestic business activities, the Anti-fraud Squad was able to detect elements of crime and to inform the Investigating Judge, who may order the same Police Force (acting as Judicial Police) to gather other financial information (including financial transactions) at FIs and to analyse it.

For this reason, the authorities should consider continue to support the activity of the Anti-fraud Squad in the contrast of illegal activities perpetrated by misusing local legal persons.

## 4. ASSESSMENT OF TRUST AND TRUSTEE

### 4.1 LEGAL FRAMEWORK

Trust is governed by San Marino law on trust which is Law n. 42 1 March 2010 and Delegated Decree of 16 March 2010 n. 49, 50 and 51 which set forth specific provisions.

San Marino Trust Law foresees for the Trust Register and Professional Trustee Register, held by CBSM which is also responsible of holding the Trust BOs Register. In particular, the Trust Register and the Trust BOs Register are held by the Office of the Trust Register set up at the CBSM, the Professional Trustee Register is held by the CBSM Supervision Department.

The CBSM has issued CBSM Regulation n.2010-01, which establishes the requirements, conditions and procedures for obtaining and maintaining the authorisation to act as “professional trustee” and establishes the procedures for keeping and accessing the Resgistetf of Authorised Trustees.

As established by the trust’s Law, the activity of trustee can be carry out in two different ways, as:

- “Professional Trustee”;
- “Non Professional Trustee”.

The “Professional Trustee” acts as trustee, in the Republic of San Marino, for more than one trust and its activity is subject to a preliminary authorisation of CBSM, according to criteria and procedures defined by the Regulation 2010-01, which establishes 3 categories of entities:

- Financial Institutions (FIs), which – as of their status – are already subjected to the general CBSM supervision;
- Corporations (joint-stock companies and limited liabilities companies) not subjected to the general CBSM supervision;
- Professionals.

The CBSM supervision on Professional Trustees concerns:

- the maintenance of requirements needed to be a professional trustee;
- training requirements.

The CBSM is furthermore entitled with the power to suspend and revoke the authorisation previously issued.

In the context of the AML/CFT framework, regardless of the number of trusts for which the trustee acts, whether the trustee receives any remuneration, the trustee is considered an obliged entity as defined under Article 1, paragraph 1, letter n) ter and Article 19, paragraph 1, letter a) of the AML/CFT Law within the category of TCSPs.

#### 4.2 INFORMATION SAN MARINO LEGAL ARRANGEMENTS

The presence of such Registers and other requirements set forth in the Trust Law permits San Marino Authorities having a broader understanding of this legal arrangement in San Marino.

The information on trustees, which have been broken down into lists considering the type and nationality of the trustee, has been scrutinized for the scope of understanding the ML/TF risk and its possible misuse.

Moreover, information on trusts have been scrutinized as well: information on the type of trusts, of the value held, client base profile and other factors have been collected and analysed in details.

The overall picture that emerged is that these products does not have an high level of sophistication in terms of parties involved.

With respect to the value of the assets under management it should be noted that the cash value is substantially the same of the 2015 NRA. The cash value is risible if compared to the total amount of the assets, while financial instruments are by far the most relevant assets if compared to others.

In relation to the trusts administrated by resident trustees at December 2018, most of the settlors are resident in San Marino or in Italy with a coverage equal to 90%. This means that this product is mostly oriented to domestic and local customers where most of the assets are settled by San Marino residents. Moreover, most of the settlors are natural persons. With regard to beneficiaries, the majority of them are resident in Italy and one third is resident in San Marino (with a similar total coverage of nearly 90%). This data also confirms that the product is mostly oriented to domestic and local customers and also beneficiaries are, for the most part, natural persons.

#### 4.3 MISUSE OF SAN MARINO LEGAL ARRANGEMENTS

The analysis conducted in the 2019 NRA has not envisaged, in the period under analysis, any abuse for ML of San Marino regarding trustees and trusts in relation to the set of data, information and documents used for this assessment, as detailed previously in the report.

#### 4.4 ACTIONS TAKEN BY SAN MARINO COMPETENT AUTHORITIES

The provisions on trusts and trustees, the measures related to transparency, the establishment of the above described Registers have created a robust legislative and regulatory framework.

Some improvements are needed to fine tune some provisions and to overcome some operative issues for which San Marino Authorities and private sector would benefit.

## 5. NEW TECHNOLOGIES

### 5.1 LEGAL FRAMEWORK

San Marino has adopted the Delegated Decree n. 86 of 23 May 2019 that provides a legal framework for some blockchain application, introducing the definition of "Blockchain Entity" (BE).

It establishes also that "San Marino Innovation" (i.e. "Istituto per l'innovazione della Repubblica di San Marino SpA") is the competent authority in charge of carrying out regulating, supervising and sanctioning all BEs.

BEs are defined in the decree as any legal person that uses DLT (distributed ledger technologies) for its business activities (e.g. agriculture, manufacturing). For this reason, the scope of BEs activities is broader than the scope of VASPs, as defined under FATF glossary.

The above mentioned decree allows BEs to issue digital instruments (i.e. initial token offering - ITO) as:

- "Utility Tokens": defined as vouchers to purchase services or goods offered by BEs;
- "Investment Tokens": defined as digital assets that represent, alternatively, depending on the underlying instrument, the issuer's participating instruments or debt securities of the issuer.

The "Blockchain Entity" is defined as "companies or other entities having their legal personality that use Blockchain systems and are resident:

- in the Republic of San Marino;
- in an EU Member State;
- in a non-EU country not classified as a "high-risk country";

and it is deemed suitable, according to the legislation in force in the Republic of San Marino" [...] and "which have been duly recognised" by the Institute.

To date, no Blockchain Entities have been registered in San Marino. However, the registration procedures of two Blockchain Entities are underway, which will presumably be completed within the end of 2019 and the beginning of 2020.

### 5.2 THE REGISTRATION PROCESS

On registration of BEs, the DD n. 86/2019 provides for the registration requirements in relation to any Blockchain Entity. These entities - wishing to obtain Recognition – and thus registration at the Register as set forth under Article 5 – shall submit a specific request in accordance with the procedures established by the Institute as set forth under Article 3 of the abovementioned Delegated Decree. Under Article 5 of the Delegated Decree, the Register shall be kept with the Institute (i.e. San Marino Innovation).

The Register is publicly available through a dedicated section on the Institute's website and contains detailed information on the BEs that have obtained the Recognition.

In order to recognize and register a Blockchain Entity, this is subjected to a due diligence process carried out by the Institute. The due diligence process has two components: a documentary component and a reputational component based on certain assessment criteria

Based on the activities carried it emerged that the due diligence process has been shown to be appropriate to the objectives.

### 5.3 AML/CFT OBLIGATIONS

As already mentioned, the DD n. 86/2019 foresees for provisions in relation to AML/CFT matters.

In particular, according to Article 12 of Delegated Decree n. 86 of 23 May 2019, Blockchain Entities - when issuing investment tokens for a total amount equal to or exceeding EUR 1,000.00 or an equivalent value if issued in a foreign currency - are subject to the provisions of the AML/CFT Law. Moreover, BEs shall also be subject to the provisions of Law no. 57 of 29 March 2019 and any subsequent amendments thereto on TFSS.

### 5.4 ACTIONS TAKEN BY SAN MARINO COMPETENT AUTHORITIES

Based on the experience gained in this sector it emerged that national cooperation is extremely important since the establishment and registration of these companies.

The Delegated Decree foresees for mechanism of cooperation between the San Marino Innovation and the FIA, although it is clear that such level of cooperation should be extended to other Public Administration Offices and Authorities

San Marino authorities are evaluating the introduction in the AML/CFT Law of specific provisions regarding the definition of “virtual asset” and “virtual asset service provider – VASP”– in line with FATF definition – with the aim to including them between the obliged entities (as DNFBPs).

## SECTION 6. INFORMATION ON ML/TF RISKS IDENTIFIED AND AML/CFT PRIORITIES IDENTIFIED

As already indicated in the 2015 NRA, the FATF suggests to focus on three main components, namely threat, vulnerability and consequences.

The concept of risk in the World Bank’s NRA tools follows a similar approach. ML/TF risks are considered to be a function of threats and vulnerabilities. The assessment of consequences is included in the assessment of threats and vulnerabilities as opposed to being treated as a separate independent factor.

The final risk is a function of threat and vulnerability and it is graphically represented in the risk map reported below, where the levels of risk have been color-coded, with low levels green, medium levels yellow, and high levels red.

The overall money laundering risk level and the overall terrorism financing risk are set at the level where the results of the respective threat assessment and vulnerability assessment intersect (see figure 6). For example, if the ML threat has been assessed as “medium” and the ML vulnerability has been assessed as “medium-high,” the money laundering risk will be “medium high.” This means that, although the threat level in the assessed jurisdiction is at a medium level, the overall money laundering risk is medium-high, given the higher vulnerability level (the weaknesses in the country’s defense mechanisms).

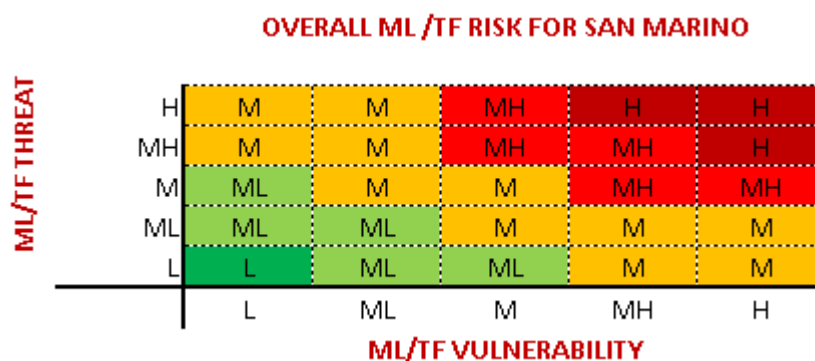


Figure 5 - Overall ML/TF Risk Map

NRA tool generates also a priority ranking to help guide relevant authorities to prioritize actions to strengthen national ML/TF combating ability factors and AML/CFT controls in the country. This helps the relevant authorities in deciding on what needs to be done first to improve the national ML/TF combating ability.

San Marino Authorities have identified TF risk and ML risk at a national level as well as ML risk related to each sector analysed. Countermeasures, aimed at mitigating such ML/TF risks, have been identified as described below.

## 1. RESPONSES TO ML/TF RISKS IDENTIFIED AT NATIONAL AND SECTORIAL LEVEL

As already indicated, the understanding of ML/TF risk is an on-going exercise and the Authorities are requested to collect updated data and information, to monitor the follow up initiatives and adopt any further measures when needed.

Based on the findings, San Marino will continue bolstering its risk-based approach through the application of proportionate and dissuasive mitigating measures commensurate with the level of ML/TF risks to which the Republic is exposed. This approach is the fundamental building block to counter money laundering, terrorism, its financing; to allocate resources (both human and technical) in an effective way and to ensure the correct implementation of measures based on the assessment of specific risks as indicated in FATF Recommendations.

At *national level*, some of the measures that shall be considered are the following:

- Keeping the compliance of the AML/CFT legal and regulatory framework with FATF Standards, Guidance and Best practices monitored;
- Continue improving the effectiveness of tax enforcement and discouraging informal economy
- Implementation of tools to measure the informal economy with appropriate indexes;
- Continue promoting high level of integrity among stakeholders;
- Supporting the activity of LEAs considering that the most relevant internal threats;
- Continue promoting the expertise on financial investigations of LEA's personnel;
- Harmonization of the access to registers by competent authorities and availability of the on-line access to these registers by the private sector;
- Fine-tuning of the sanctioning regime.

At *sectorial level* additional efforts shall be done to:

- Continue promoting high level of integrity

- through a constant training activity and screening procedure on staff and management of FIs;
  - by promoting trainings, experience sharing and public events for the remaining categories of obliged entities;
- Transpose of the EU Fit & Proper requirements (Directive 2013/36, Art. 91, the so called CRD-IV) for the banking system;
  - Increase the AML/CFT knowledge of NFPs having regards to the specific characteristics, business activities, services provided by different categories of obliged entities;
  - Increase the quality of monitoring and reporting mechanisms in particular for NFPs;
  - Implement a fully adoption of MIFID Principles and Guidelines into CBSM regulations requiring the obliged entities to have an even better knowledge of their customers in the matter of financial investment;
  - Introduction in the AML/CFT Law of specific provisions regarding the definition of “virtual asset” and “virtual asset service provider – VASP”– in line with FATF definition – with the aim to including them between the obliged entities (as DNFBPs).