GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

SAN MARINO

2018 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: San Marino 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
4th AMLD	EU Fourth Anti-Money Laundering Directive
AEOI	Automatic Exchange of Information
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CBSM	Central Bank of San Marino
CDD	Customer Due Diligence
CLG	Company Limited by Guarantee
CLO	Central Liaison Office of San Marino
CRS	Common Reporting Standard
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force

FIA	Financial Intelligence Agency
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PRG	Peer Review Group of the Global Forum
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

Executive summary

1. This report analyses the implementation of the EOIR standard by San Marino in respect of EOI requests processed during the period from 1 January 2014 to 31 December 2016 against the 2016 Terms of Reference. This report concludes that San Marino is Compliant with the EOIR standard overall. In 2010 the Global Forum evaluated San Marino's legal framework (Phase 1 Report) and subsequently in a supplementary report in 2011. In 2013 the practical implementation of the legal framework was reviewed (Phase 2). That report (the 2013 Report) concluded San Marino to be rated as Largely Compliant overall.

2. The following table shows the comparison with the results from San Marino's most recent peer review reports:

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Combined Report (2013)	Second Round EOIR Report (2018)
A.1	Availability of ownership and identity information	C	LC
A.2	Availability of accounting information	LC	C
A.3	Availability of banking information	C	C
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	LC	C
	OVERALL RATING	**LC**	**C**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. Since the 2013 Report San Marino continued to perform well in all aspects of transparency and exchange of information on request.

4. San Marino had received two minor recommendations to continue enhancing its network of EOI instruments, and to monitor its resources and procedures so that its competent authority continues to provide complete and quality information to its partners. These recommendations have been implemented and peers have generally been very satisfied with the quality and timeliness of the information received under San Marino's EOI mechanisms.

5. The 2013 Report noted that there had been some instances where accounting information was not available in the three years under review (2009 to 2011). These cases mostly related to companies that carried out fraudulent activities and that did not keep accounting records. In view of the then recently brought in financial penalties under the Company Law to sanction defaults with regard to the keeping of accounting information, and even though San Marino had already acted to prevent companies from carrying out fraudulent activities and not keeping accounting records, it received a recommendation to monitor the enforcement measures properly, so as to ensure the availability of accounting information as per the Terms of Reference.

6. In the current review period, there were no instances of imposition of the penalties introduced in 2011 but the Tax Office has imposed sanctions in respect of lack of accounting information and the Financial Intelligence Agency (FIA) for breaches of record keeping requirements. The oversight measures in the review period appear appropriate to ensure the availability of accounting information as per the standard in respect of all entities and arrangements at all times. Therefore, the previous recommendation for element A.2 has been removed and the rating upgraded to Compliant.

Key recommendation(s)

7. In respect of the new aspects of the 2016 ToR, San Marino's legal framework and practice in general meet the standard. In particular, San Marino ensures the availability of beneficial ownership information under anti-money laundering (AML) laws except in the case of the identity of all beneficiaries of trusts, which is limited to those that hold more than 25% of the capital of the trust. However, San Marino has recently introduced amendments to its AML Law (to transpose the 4th EU AML Directive) which came into effect from 11 December 2017 that bring the definition of beneficial owner in line with the ToR. San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that legal and beneficial ownership information is available in all cases as per international standard.

Overall rating

8. San Marino is overall rated Compliant with the EOIR standard. San Marino has had only three partners but a significant EOI relationship with Italy, its only neighbour jurisdiction, from where came most of the 361 requests received over the period under review (1 January 2014 – 31 December 2016). San Marino has responded to most of the requests in a timely manner and the peer feedback was reflective of a positive EOI relationship with San Marino. It is also noted that compared to the period 2009-11 during which San Marino had received only 3 requests, San Marino received few EOI requests until 2016, when it received over 300. San Marino has successfully handled a substantial increase in the number of requests.

9. The report was approved by the PRG at its meeting in June 2018 and was adopted by the Global Forum on 13 July 2018. A follow up report on the steps undertaken by San Marino to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place.		
EOIR rating: Largely Compliant	San Marino has recently introduced amendments to AML Law which came into effect on 11 December 2017, aligning the definition of Beneficial Owner with the ToR and requiring all companies to keep a register of their beneficial owners.	San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that accurate legal and beneficial ownership information is available in all cases as per international standards.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
EOIR Rating Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.	
EOIR Rating: Compliant		

Overview of San Marino

1. This overview provides some basic information about San Marino that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of San Marino's legal, tax or regulatory systems. San Marino is situated on the Italian Peninsula and spread over an area of about 61 square kilometres surrounded by Italy. With a population of 33 562, San Marino has the smallest population of all the members of the Council of Europe and has a high per capita income of USD 46 447.

Legal system

2. The Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Law no. 59 of 8 July 1974 and subsequent amendments) is the main law establishing the institutional framework of the jurisdiction. It guarantees the fundamental civil, political and social rights and is considered as a Constitution. The Great and General Council is the Parliament which approves various kinds of laws: constitutional (require 2/3rds majority) and qualified laws (require absolute majority) which regulate the operation of constitutional bodies while ordinary laws are approved by the Great and General Council by simple majority. The Great and General Council also ratifies delegated decrees and decree-laws by simple majority. In San Marino, customary and common law also constitute supplementary source in the absence of specific legal provisions. The Republic of San Marino recognises rules of international law as integral part of its constitutional order, to which it conforms its acts and conduct.

3. International treaties (DTCs, MAAC) and conventions come first in the hierarchy of legal norms, followed by Constitutional laws, qualified and ordinary laws, decrees, Congress of State Decisions, Financial Intelligence Agency (FIA) Instructions, and regulations. Congress of State decisions are binding and enforceable. Instruments under various names including circulars and instructions etc. may also be issued but these do not have the status of law or regulation. Regulations and circulars issued by the Central Bank or the Financial Intelligence Agency are however mandatory and enforceable.

4. The judicial power is organised in a Single Court having ordinary and administrative jurisdictions, including for tax related matters. Two levels of appellate courts are available: the Civil and Criminal Judge of Appeal and the Administrative Judge of Appeal; and the judge of the last appeal. The Council of Twelve (*Consiglio dei XII*), chaired by the Captains Regent fulfils administrative functions. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*), established on 28 April 2005, verifies that laws, acts, and provisions are consistent with the constitutional principles.

5. The Court for Trusts and Fiduciary Relations was established in San Marino and is governed by the Constitutional Law of 26 January 2012 no. 1 "Establishment of the Court for the Trust and the Fiduciary Relationships".

6. Under San Marino legislation, it is possible to initiate proceedings before an ordinary judge to protect subjective rights. In case of violation of legitimate interests, the person concerned may start proceedings before administrative judges. In both cases, the commencement of proceedings is not an obstacle to exchange of information and the Central Liaison Office (CLO) may in any case transmit data to the requesting jurisdiction. If the complaint is upheld by the Court and the latter establishes that the CLO had obtained information without being authorised by law, the CLO would be liable to compensate the person in question for the violation of his/her legitimate rights. In this case, the CLO would notify its foreign counterpart of such Court decision. San Marino has indicated that as in the previous review period, during the current period under review this procedure was never invoked.

7. The Law on International Tax Co-operation (Law no. 174/2015 and subsequent amendments) also does not provide for forms of appeal in relation to the exchange of information with other jurisdictions. Indeed, it specifies, as already stated in Decree Law no. 36/2011, that the provisions referred to in Law no. 70/1995 (any natural or legal person has the right to know and to challenge, for possible correction, the data and information collected, processed and used in computer applications, the results of which are applied or relate to him personally) do not apply in the context of exchange of information under international agreements, subject to compliance with the provisions on data confidentiality.

8. While not being a member of the European Union, San Marino has entered into Customs, Tax and Monetary agreements with the European Union. In accordance with the obligations established by the current Monetary Agreement, San Marino has transposed the AML/CFT EU Directive no. 2015/849 (the so called 4th Directive) into its domestic AML Law (Law No. 92/2008) with effect from 11 December 2017.

Tax system

9. The San Marino tax system provides for direct and indirect taxes. With reference to direct taxes, San Marino's general income tax (IGR), is governed by a reform applicable from the 2014 tax year (Law n. 166/2013 and subsequent amendments and integrations). The above-mentioned reform has introduced the World Wide Taxation principle for individual residents (i.e. taxation in San Marino of income earned anywhere in the world) and consolidated the principle of territorial taxation (principle of source) for non-residents (for example income from employment of cross-border workers and permanent establishments). Individuals are taxed at a progressive rate according to income brackets: a 9% minimum rate is applied to income not exceeding EUR 10 000 and a 35% maximum rate to income above EUR 80 000.

10. Until 2017 corporate income and income from self-employment/professional activities produced by individuals was taxed at a flat rate of 17%, while starting from 2019 such incomes will be taxed at a progressive rate according to income brackets, similarly to the system described above for natural persons. Trusts are taxable persons and income from trust activities is taxed at the ordinary tax rate applied to companies (17%) on a tax base equal to 10% of the actual trust income (effective tax rate of 1.7%). Transfers from the settlor to the trustee and from the trust to the beneficiaries are exempt from taxation. The main indirect tax envisaged by San Marino tax system is the import tax also called single-stage tax (*monofase*) (Law no. 40/72 and subsequent amendments and integrations), since it is levied on goods and related services only once, namely when goods are imported into the territory of San Marino. The ordinary rate for import tax is 17%, though different rates are also applied to some categories of goods. At present, no VAT system is in force in San Marino.

11. The Tax Office in San Marino is composed of two main sections: direct taxes and indirect taxes. The section responsible for direct taxation has the task to collect, manage, control and verify income tax returns, together with their attachments, as well as withholding agents. It is also responsible for verifying the regularity of account keeping and of compliance with the other obligations envisaged by law. This section is composed of two subdivisions: control and assessment. The Tax Office holds the information contained in income tax returns and in their attached documents, including financial statements and profit and loss accounts, as well as all information concerning commercial exchanges with Italy and with other countries. The information obtained is kept in the database of the Tax Office. This database is accessible to the CLO. Moreover, the Tax Office has the power to enter, make inspections and review controls in the premises where economic activities are conducted, to examine and verify company accounts and deeds as well as all

documents that have to be kept by taxpayers, including information contained in archives, even in electronic format. These powers may also be exercised when the CLO request information from the Tax Office for the purpose of international exchange of information.

Financial services sector

12. The financial system of San Marino consists of 7 banks, 6 non-banking financial institutions carrying out financial/fiduciary activities, 2 investment companies, 2 insurance companies and 1 payment institution. Banking assets amount to around EUR 5.3 billion (370% of GDP), EUR 3.3 billion of which refer to gross loans (230% of GDP). The total deposits of the banking system is equal to EUR 6.4 billion (446% of GDP), 70% of which refers to direct deposits (savings and interbank collection) and the remainder to indirect deposits. The three major banks account for about 70% of total bank assets and deposits in the system. The volume of fiduciary activity amounts to about EUR 137 million, making up 48.6% of the entire fiduciary activity of the financial system (the remaining part is managed by banks). The breakdown of fiduciary activity by category shows that the most significant components refer to fiduciary operations concerning shareholdings (50.9%) and real estate (47.3%). The majority of the customers of Banks in San Marino are from Italy.

13. In the insurance sector, premiums collected by San Marino insurance companies mainly refer to whole life or endowment insurance policies subject to revaluation (class I premiums) and to financial insurance products (class III and V premiums). As of 31 December 2016, the total book value of investments by domestic insurance companies was approximately EUR 353 million (equal to about 24.55% of GDP). In addition, about 40 other parties are authorised to carry out insurance and reinsurance activities. These parties are divided between natural persons and sole proprietorships (10 parties), companies (24 parties) and banks and financial companies (9 parties).

14. In San Marino, the exercise of banking, financial and insurance activities is governed by Law no. 165 of 17 November 2005, Law on Companies and Banking, Financial and Insurance Services (LISF) and by the provisions issued by the Central Bank of the Republic of San Marino (CBSM), which is the supervisory authority of the financial system. Law no. 165/2005 sets out the requirements and procedures to be complied with by financial companies for the exercise of the activities defined as reserved by the law: Banking activity; Granting of loans; Fiduciary activity; Investment services; Collective investment services; Non-traditional collective investment services; Insurance activity; Reinsurance activity; Payment services; Electronic money issue services; Exchange intermediation; Acquisition of shareholdings; Centralised deposit service for financial instruments.

15. The LISF and the Central Bank regulations establish precise requirements for the exercise of reserved activities. Parties authorised to exercise one or more reserved activities are registered by the Central Bank. In its capacity as supervisory authority of the financial system, the Central Bank monitors the activity of authorised parties. Supervision is carried out through off-site or onsite inspections. The Central Bank has the power to regulate matters and areas governed by the LISF and to sanction the supervised parties in case of violation of the law and regulatory provisions to which they are subject.

16. Professionals providing services to customers, such as lawyers and accountants are required to register with their respective Registry. They are also "obliged parties" under the anti-money laundering and counter-terrorist financing (AML/CFT) laws of San Marino. The exercise of the Office of Professional Trustee is subject to authorisation of the Central Bank. Trustees are also subjected to anti-money laundering provisions with regard to record keeping of the trusts. Law No. 92/2008, which is the AML Law, has recently been amended (which came into effect from 11 December 2017) and transposes the EU 4th AML Directive into San Marino's legal framework, which is applicable to all obliged parties providing services in the financial sector.

17. "Professionals" includes professionals enrolled in the professional Register of Accountants, in the professional Register of Lawyers and Notaries, in the Register of Auditors and Auditing firms as well as in the Register of Actuaries. The category of non-financial parties (Article 19 of Law 92/2008) includes: trust or company service providers; real estate agents; providers of services 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; managers of auction houses, art galleries or traders in antiques; and service companies that carry out activities supporting the professional services.

18. The AML Law further identifies obliged parties and covers all the "financial parties" in San Marino. The term financial parties (Art. 18 of Law 92/2008) includes: banks, financial parties, fiduciary companies, insurance companies, management companies, Ente Poste (when it provides financial services), financial promoters as well as insurance and reinsurance brokers. This category also includes the San Marino Central Bank when, in performing its institutional functions, it establishes business relationships or carries out occasional transactions requiring compliance with AML/CFT obligations.

AML Framework

19. The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its reviews are based on a country's

compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

20. The FATF last published a Mutual Evaluation Report for San Marino in September 2011, in which San Marino was rated as "Partially Compliant" for R.10 (Customer Due Diligence (CDD)), "Largely Compliant" for R.24 and R.25 (Beneficial Ownership of legal persons and arrangements). The most recently published follow-up report was adopted at the 47th Plenary in April 2015.[1] As per the follow-up report, the deficiencies on blanket exemption from performing CDD (R.10) have been eliminated by amendments in 2013 to Law No. 92 of 2008 (the AML Law). Based on the information held by the San Marino authorities, the next (The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) MONEYVAL evaluation round will begin in 2019. In San Marino, the AML obligated parties cover the usual list of professionals (notaries, lawyers, accountants), trust service providers, banks and other financial parties. However, a trustee that is not accepting any remuneration as well as not administering more than one trust would be a non-professional trustee, who is nevertheless subject to the overall supervision of the FIA.

Recent developments

21. As compared to the previous review period, there have not been many significant changes to the legal framework of San Marino. The few relevant changes include Law no. 174 of 27 November 2015 (International Tax Co-operation) which has been adopted to bring together the various types of information exchange, including exchange on request, in the context of international tax co-operation. This law includes the provisions already in force with Law no. 95 of 18 June 2008 (Re-organisation of the supervisory services over economic activities), Law no. 106 of 22 July 2011 (Provisions for the implementation of international tax assistance through exchange of information) and Decree Law no. 36 of 24 February 2011 (Urgent provisions to conform to international standards on transparency and exchange of information) in a single law for international co-operation on exchange of information. It confirms all the powers and principles that were already there in Law 36/2011.

22. In the new law, the functions and mandate of the CLO are well defined – the Director and Vice Directorate are now appointed for 5 years.

1. www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SMR4_Summ_MONEYVAL(2011)20_en.pdf and https://rm.coe.int/2nd-regular-follow-up-progress-report-4th-round-mutual-evaluation-of-s/1680716048.

There are additional sanctions regarding EOIR – the strictest sanction is up to EUR 50 000 for anyone who hinders the CLO's work and there are sanctions for delay in responses also. Law no. 174/2015 also includes provisions on the automatic exchange of financial account information to implement the Common Reporting Standard.

23. Further changes worth mentioning are Delegated Decree no. 117 of 24 July 2014 (Harmonisation and Updating of Law no. 47 of 23 February 2006 and subsequent amendments in relation to the new provisions on the exercise of economic activities) and Law no. 101 of 1 July 2015 (Law on Foundations) and its Regulation no. 14 of 24 August 2016 (Regulation implementing Article 41, paragraph 1, letter f) of Law no. 101 of 1 July 2015 "Law on Foundations").

24. More recently, San Marino has introduced amendments to its AML Law (92/2008) with effect from 11 December 2017. The amendments were brought in to transpose the requirements of EU's 4th AML Directive. The amendments bring the definition and determination of Beneficial Ownership in San Marino in line with the international standards. The amendments mandate all legal entities and legal arrangements to maintain their own beneficial ownership information as well as to report to the registers maintained by the Office of Industry and the Trust Register by 19 August 2018 and by the end of 2018, respectively.

Part A: Availability of information

25. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities

26. The 2013 Report found that Element A.1 was determined to be "in place" and rated Compliant. The 2013 Report noted in detail the several changes made by San Marino in its legal and regulatory framework to ensure that the obligations imposed on domestic and foreign companies, partnerships, trusts and foundations for keeping ownership and identity information. It concluded that they are generally sufficient to meet the international standards. The 2013 Report also noted that, in practice, the legal framework complemented by sanctions, ensures that the legal ownership information available with the authorities is updated and reliable (often in electronic databases).

27. In respect of those new aspects of the 2016 ToR that were not evaluated in the 2013 Report, particularly with respect to the availability of beneficial ownership information, this information is available where any relevant entity or arrangement engages a person obligated to conduct customer due diligence (CDD) under the anti-money laundering law (AML law). The records are required to be maintained for at least 5 years and there are penalties and enforcement provisions in place.

28. However, the AML law definition of "beneficial owner" during the review period was not identical to that which applies for the purpose of the ToR, in not having the cascade principle and not necessarily covering the identification of senior management, although it would guarantee that information tracing the chain of ownership was available.

29. San Marino has introduced amendments to its AML Law (92/2008) with effect from 11 December 2017. The amendments were brought in to transpose the requirements of EU's 4th AML Directive. The amendments bring the definition and determination of Beneficial Ownership in San Marino in line with the international standards. The amendments mandate all legal entities and legal arrangements to maintain their own beneficial ownership information as well as report to the registers maintained by the Office of Industry and the Trust Register by 19 August 2018 and 31 December 2018, respectively.

30. To ensure continuity of effective exchange of accurate and up-to-date beneficial ownership information, and in view of the recently introduced amendments to the AML Law in respect of the EU's 4th AML Directive, San Marino is recommended to monitor the implementation of the new legal provisions to ensure that beneficial ownership information is available in all cases.

31. In the previous review period (2009, 2010, 2011), San Marino received three EOI requests from one jurisdiction concerning ownership information. The 2013 Report noted that the information in two cases was provided in a timely manner to the requesting jurisdiction.

32. During the current peer review period San Marino received 361 requests, about 321 of which related to ascertaining tax residence information and 23 of which related to ownership information. Peers were generally very satisfied with the information received. San Marino was expressly asked to provide legal ownership information in 15 cases and beneficial ownership information on about 8 occasions and this information was provided to the satisfaction of the requesting peers. The CLO reports that it has never been unable to respond to a request for information due to the fact that information was not available in accordance with the law.

33. The new table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	San Marino has recently introduced amendments to AML Law which came into effect on 11 December 2017, aligning the definition and method of identifying Beneficial Owner with the ToR and requiring all legal entities and legal arrangements to keep a register/record of their beneficial owners.	San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that accurate legal and beneficial ownership information is available in all cases as per international standards.
Rating: Largely Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

34. The 2013 Report analysed the legal framework with regard to company formation in San Marino (see 2013 Report, paras 64-67). There have been no amendments to that legal framework since then. The main piece of legislation that governs Companies in San Marino is the Law No. 47/2006 (which will be referred to as "Company Law" in this report, as in the 2013 Report).

35. Generally, companies formed under the Company Law can be joint-stock companies (*societa per azioni*) and limited liability companies (*societa a responsabilita limitata*). The capital of the company and participation in joint-stock companies is represented by shares and units in the case of Limited Liability Companies. Both natural and legal persons can be members of companies with share capital. In addition, the Company Law also provides for Co-operatives like housing co-operatives or consumer co-operatives (see 2013 Report, para 63). There are 606 joint stock companies, 4 956 limited liability companies and 78 co-operatives registered in San Marino.

Legal Ownership and Identity Information Requirements

36. As described in the 2013 Report in section A.1 (see 2013 Report, paras. 68-76, 89), legal ownership and identity requirements for companies are mainly found in San Marino's Company Law and AML Law. The

following table[2] shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership of companies

Type	Company law	Tax law	AML law	Law No. 40/2014
SPA (Joint Stock companies)	All	None	All	Not Applicable
SRL (Limited Liability Companies)	All	None	All	Not Applicable
Foreign companies (tax resident)	None	None	All	All
Co-operatives	All	None	All	Not Applicable
Foundations	None	None	All	Not Applicable

Company Law

37. As noted in the 2013 Report (see paras 64-70), the Company Law provides that for every company incorporated in San Marino, the memorandum of association must be a public deed (Article 18 of Law no. 47/2006). The notary who has received the memorandum of association by the founding members, after having verified that the conditions established by the law have been fulfilled, deposits a certified copy thereof with the Court Registry within 30 days. After being entered in the Register, the company acquires legal personality, which continues until the company is struck off the Company Register. The memorandum of association contains information on the identity of legal owners and also contributions made by them to the capital. The requirements for providing updated ownership information, whenever there is a change, to the Registry apply including in the case of companies in the process of liquidation (voluntary as well as compulsory) and the retention requirements with the liquidator remain the same as from the previous report (see 2013 Report, para. 77).

38. Companies are also required to keep a register of members, indicating the number of units or shares, the personal details of those holding units or registered shares, as well as transfers and ties related thereto. Similarly, co-operatives are also required to keep a register of members, with progressive numbering of units and indicating the surname, name, date and place of

2. The table shows each type of entity and whether the various rules applicable to each require the availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

birth, citizenship, domicile and residence, working activity, number of units subscribed and paid for (Art. 52 of Law no. 149/1991). San Marino further advises that in the case of corporate ownership, the CDD is performed on the corporate owners: in particular, all identification data of the beneficial owner must be collected and his/her identity must be verified through the acquisition of the identity document(s).

39. In cases of transfer of ownership (Sana Marino clarified that there is no threshold), a certified copy of the deed of transfer of the units must be deposited with the Court Registry within 30 days following its registration in the stock ledger of the company, and in any case not later than 60 days following the date of signing of the deed, by and under the responsibility of a notary.

40. As regards foreign companies (of all types) which have been authorised under paragraph 1 of Art. 13 of Law no. 40/2014, the documentation concerning the identity of the holders of units or registered shares is deposited with the Office of Industry, Handicraft and Trade by a specifically delegated person on behalf of the foreign company. Any time that a request for the renewal of the annual authorisation is submitted (along with payment of Taxes), the Office of Industry verifies that the initial requirements (the identity of the beneficial owners of company shareholdings, for which data must be updated upon each change) are still in place. San Marino has also explained that the provisions contained in Article 13 of Law no. 40/2014 and in the Charter of Services provided for therein, require foreign companies to disclose updated legal and beneficial ownership information upon each change.

41. San Marino further advises that in view of the amended AML Law with definition of beneficial owner in line with the ToR, the concept of beneficial ownership as defined in Law No. 40/2014 (art. 13, letter g) corresponds to the one in the amended AML Law. In particular, the above cited article states that it is not possible to provide a license to companies that do not declare the effective beneficial owners of company shares to the Office of Industry, which has the powers and obligation to control that requests for registration are in line with legal requirements. A Memorandum (Circular 1/2018) of Office of Industry confirms the control function it performs in terms of requiring beneficial ownership information in line with the amended AML law. In respect of sanctions for non-compliance, as provided for by Art. 5 of Law no. 98/2010, the Office of Industry, Handicraft and Trade may impose an administrative sanction of EUR 5 000 for any single violation, following a report by the competent supervisory offices/bodies to which communications are to be addressed or with which documents have to be deposited. In addition, foreign companies that do not provide the requested documentation (certificate of incorporation with the names of shareholders)

are not granted by the Office of Industry the authorisation to operate in San Marino. As reported by San Marino, currently there are 16 foreign entities in operation.

42. San Marino and foreign fiduciary companies are responsible for reporting information (and any changes therein), which must be recorded in the Register of Fiduciary Investments.

43. In terms of retention of legal ownership information by the entities, as noted by the 2013 Report with regard to companies which were liquidated, corporate books must be kept by the liquidator, by a notary public or an accountant for five years and may be accessed by anyone (Company Law, Art. 113). Such obligation is binding as well on permanent establishments of foreign companies and legal persons and entities having their registered office or place of effective management in San Marino for most of the tax period.

Tax law requirements

44. As noted by the 2013 Report, with regard to legal and beneficial ownership and identity of legal entities there is neither a procedure nor an obligation to register with the Tax Administration in San Marino. There is no change in this position in the current review period also and therefore the tax returns do not provide legal and/or beneficial ownership information at filing stage. However, San Marino advises that the Tax Office examines the share-holders register during tax audits.

Anti-money laundering law

45. All the companies established/created under the San Marino legislation necessarily have to engage with AML obligated persons since, any company must be established through a public deed signed by a notary who, being an obliged person, performs AML obligations including CDD requirements when assisting his/her client to set up a company. Moreover, registered shares must be transferred by means of a public deed recorded by a San Marino notary, who is required to file an authentic copy of assignment deed with the Registrar's office. In the case of a foreign company, San Marino advises that a legal representative in San Marino must be appointed upon its establishment, the so-called "*Preposto*", who, according to Article 13 of Law no. 40/2014, will have the same rights and the same obligations as a sole director and who must base its domicile at a professional's office, and thus comply with all AML obligations.

46. Transfer of shares has effect only after it has been registered in the stock ledger as well as reported to the Court Registry. In this case, again a notary must perform CDD requirements and maintain it with him/her as

well as report to the Court Registry. As noted by the 2013 Report (see paras 87-89), during the review period, the requirements for CDD under the AML Law oblige the notary who is involved in the registration of the company and transfer of ownership, as well as other professionals to ascertain identities and legal ownership information (Art. 22).

Legal ownership information – Enforcement measures and oversight

47. Companies are required to keep the register of members, indicating the number of units or shares, the personal details of the holders of units or registered shares, as well as transfers and ties related thereto. If a share capital company or a partnership does not comply with one or more of the obligations, an administrative pecuniary sanction ranging from EUR 2 000 to EUR 25 000 is applied. (Art. 72, point 1, paragraph 4 of Law no. 47/2006 and subsequent amendments).

48. In the review period the Companies Registry has not applied any sanctions for non-compliance in respect of maintenance of legal ownership information, however San Marino has reported that every company must file with the Commercial Registry of the Court a statement designating the professional with whom the books are deposited. San Marino advised that the monitoring activity carried out during the peer review period did not reveal any irregularities. At the time of the deposit with the Registry, a formal control is performed over all documents submitted for various reasons on behalf of a company. In respect of annual filing compliance rates, San Marino has reported that the review period around 85% of the active companies have deposited the documents required by law (i.e. annual Budget and Supplementary Note) with the Commercial Registry of the Court.

49. The cases where documents were not submitted related to companies no longer active for various reasons (e.g. termination of licence or company subject to liquidation procedures). In the absence of specific data on the outcomes/sanctions for any non-compliance rates for filing annual returns by companies (with the Court Registry) in the review period, the effectiveness of the supervision in relation to the availability of accurate and updated legal ownership information is difficult to assess. San Marino is accordingly, recommended to ensure that there is adequate supervision on all companies such that accurate legal ownership information is available in all cases. San Marino has further advised that the control of all active companies has not yet been completed by May 2018. From 01/01/2018 the data relating to the property is shown on a public deed called “certificate of status”. The public nature of the act represents an additional guarantee of an updated and correct act.

50. As concerns foreign companies and foreign partnerships, during the review period, there were no onsite inspections or sanctions applied in

respect of failure to ensure availability of accurate and updated legal ownership information, if the reporting and filing obligations envisaged by Law no. 98/2010 and Law no. 47/2006 and subsequent amendments were not fulfilled. In practice, the Office of Industry has never conducted any onsite inspections to verify the ownership information and has not applied any sanctions in respect of foreign entities.

51. However, San Marino has reported that there were only 16 foreign companies registered at the end of the review period and there were no EOI requests in respect of foreign companies in the review period. San Marino has also reported that at the time of the request for authorisation to operate in San Marino, the activity is not authorised if the beneficial owners of the company's shareholdings are not reported to the Office for Industry, Handicraft and Trade. Failure to update information on the legal owner/beneficial owner entails the non-fulfilment of a subjective requirement which may lead to the revocation of the authorisation to exercise the economic activity in the territory. Pursuant to the recent amendments to the AML law, beneficial ownership information will be disclosed to the Office for Industry in order to be kept in a register with reserved access. San Marino is recommended to monitor the implementation of new requirements under the amended AML Law, in respect of all foreign companies.

52. It is also noted that, in addition, when the Tax Office carries out a tax examination on a company it always consults the Share Register to identify its legal ownership and reports any mismatch to the Registry. During the tax examinations carried out by the Tax Office, accounting records are required to be delivered and the keeping of these records is verified. The above also takes place in cases where the examination is carried out with the assistance and support of Police Forces (for example the Fraud Squad) or of control Offices such as the Office for Control and Supervision of Economic Activities (OCSEA), regardless of whether the examination procedure has been started by the aforementioned Offices on their own initiative.

53. Domestic and foreign fiduciary companies are responsible for reporting information (and any changes therein), which must be recorded in the Register of Fiduciary Investments. As the Central Bank maintains such Register, it updates the information contained therein following a report by reporting parties (fiduciary companies). It also verifies and inspects any omissions or inconsistencies found.

54. The FIA also regularly carries out supervisory activities relating to record-keeping requirements under the AML framework. In the three-year period from 2014 to 2016, the FIA carried out a total of 95 inspections, of varying nature and scope, of all categories of obliged parties. The details of various onsite inspections carried out in the review period are discussed below under the beneficial ownership section (below).

Availability of legal ownership information in practice in relation to exchange of information requests

55. As noted in the 2013 Report, there were no issues in providing legal ownership information during the previous review period but the number of EOI request was of only three during the period. In the current review period, San Marino received 23 requests from 3 peers related to ownership information of joint-stock and limited liability companies. San Marino has not faced any difficulties in providing information in all these cases in a timely manner. There has been no adverse peer input in respect of the quality of the information on ownership information of legal entities exchanged.

Availability of beneficial ownership information

56. Under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In San Marino, this aspect of the standard is met through AML law and Company law requirements. Each of these legal regimes is analysed below. As for legal ownership, there is neither a procedure nor an obligation to register beneficial ownership information with the Tax Administration.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML law	Law No. 40/2014
SPA (Joint Stock companies)	None	None	All	Not Applicable
SRL (Limited Liability Companies)	None	None	All	Not Applicable
Foreign companies (tax resident)	None	None	All	All

Company Law

57. As noted in the 2013 Report (see para. 71), San Marino enacted Law No. 98 of 7 June 2010 (Provisions for the Identification of the Beneficial Ownership Structure of Companies under San Marino Law). Article 4 of this law requires all companies with share capital having their registered office in San Marino to provide a certified abstract of their Register of Shareholders, through a Notary Public, to the Commercial Registry of the Single Court (by 31 July 2010). This Register of Shareholders must clearly outline the company's ownership structure. However, it is noted that the definition of beneficial owner is limited to specifying it as a natural person, without adequate guidance on determining the same (for e.g. thresholds of ownership, exercising control through other means).

58. Nevertheless, in view of the recent amendments to AML Law, brought in by Decree-Law no. 139 of 11 December 2017 (discussed below),

all companies are now required to maintain beneficial ownership information in line with the ToR and to report the same to the Office for Industry by 19 August 2018.

59. It is also noted that as per para. 3 of Article 10 of the Company Law, it is required that at least 50% of the capital is paid-in (by the owner) within 60 days from the company formation. If the payment is made in money, it should be deposited to the company's account within a bank of San Marino (i.e. a local bank). The remaining amount should be paid-in within 3 years. Therefore the beneficial ownership information as per the ToR may also captured by the bank under the new AML provisions. However, San Marino has not confirmed that in all such cases the bank account remains open throughout the company's existence.

Anti-money laundering law requirements

60. The main AML law is Law no. 92 of 17 June 2008 as subsequently amended, and a number of Delegated Decrees were also issued. Primary sources of law are then translated into numerous secondary binding regulatory provisions (called "Instructions"), issued over time by the Financial Intelligence Agency (FIA), the Financial Intelligence Unit of the Republic of San Marino (in the period 2008-16, the FIA issued a total of 38 Instructions).

61. The AML law definition of "beneficial owner" during the review period was not identical to that which applies for the purpose of the ToR, in not having the cascade principle and not necessarily covering the identification of senior management.

62. The San Marino AML/CFT legislation governs customer due diligence, acquisition of data, information and documents of beneficial owners, data and information recording and record keeping. Specifically with regard to due diligence, as noted by the 2013 Report (see paras 87 to 89) the current regulatory framework provides that obliged parties (financial parties, professionals and non-financial parties) must identify and verify the identity of customers and beneficial owners, acquire data and information on the nature and the purpose of the business relationship or the occasional transaction, assign a risk profile to customers and, on the basis of that risk profile, regularly monitor transactions to verify their compatibility with the information obtained.

63. The AML/CFT legislation (Art. 29 of Law 92/2008) also allows reliance on customer due diligence carried out by third parties (subject to AML requirements) with whom the customers have business relationships or whom have been tasked by the customers with carrying out an occasional transaction. For this purpose, third parties must issue, if requested by the customer, a document attesting that they have met customer due diligence requirements.

The third party shall be a financial institutions applying CDD requirements and other AML/CFT obligations (e.g. record keeping, STR reporting) consistent with the 4th AML Directive and supervised in a consistent manner with the 4th AML Directive as well as domestic "professionals" (i.e. notaries, lawyers and accountants). Obliged parties, relying on third parties for CDD obligations shall: obtain from the latter all information needed and take steps to ensure that the latter provide, upon request, information and any document need in relation to the customer and to the beneficial owner.

64. Also in this case, the ultimate responsibility for meeting customer due diligence requirements remains with the obliged parties, which must satisfy themselves that the third parties are able to fulfil customer due diligence requirements and that they will immediately make available to them, without delay and upon simple request, the information acquired while performing customer due diligence. Obliged entities shall always assess whether the evidence gathered and the verifications carried out by third parties are appropriate and sufficient to fulfil the obligations envisaged by AML/CFT Law and verify, within the limits of professional diligence, the veracity of the documents received. In case of doubts about the identity of the customer, of the executor and of the beneficial owner, obliged entities shall fulfil identification and customer due diligence requirements directly. In any case, obliged entities shall be prohibited from relying on third parties established in the high-risk countries referred to in Article 16 to meet customer due diligence requirements. Failure to provide requested information on failure, by third parties to perform CDD, have consequence in the CDD process by obliged parties leading to the closure of the business relationship in San Marino as set forth under article 24 of the AML/CFT law. The FIA, being the sole AML/CFT regulator and supervisor for San Marino, has issued Instruction n. 4 of 22 may 2009 (Instruction 2009-04) governing the reliance on third parties. Based on the FIA experience the usage of third parties in San Marino is very limited.

65. According to Articles 21 to 29 of Law no. 92/2008, AML/CFT obliged parties acquire all data and information about their customers when a new business relationship is established or an occasional transaction amounting to more than EUR 15 000 is carried out. Obliged parties (pursuant to Article 34 of Law 92/2008) maintain all records for at least five years after the termination of the relationship or execution of the occasional transaction or provision of the professional service.

66. All companies established under the San Marino legislation engage with AML obligated persons (notaries). As per Article 20 of the Company Law, any company must be established through a public deed signed by a notary who, being an obliged person, must perform AML obligations including CDD requirements when assisting his/her client to set up a company.

Moreover, registered shares must be transferred by means of a public deed recorded by a Sammarinese notary, who is required to file an authentic copy of assignment deed with the Registrar's office. The transfer has effect after it has been registered in the stock ledger. In this case, a notary must perform CDD requirements. On an annual basis, legal entities must prepare balance sheets; this again requires notaries/lawyers to perform CDD requirements. When providing services to companies, notaries, lawyers (as well as accountants), must perform AML/CFT obligations including CDD requirements and therefore identify the beneficial owners of the clients.

Amendments to the AML Law to transpose the EU 4th AML Directive

67. The European Union's 4th Anti-Money Laundering Directive provides that Member States must ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. The Parliament of San Marino (the Great and General Council), in accordance with the obligations established by the current Monetary Agreement signed by San Marino and the European Union, has introduced amendments to its AML Law (92/2008) with effect from 11 December 2017 to transpose the requirements of EU's 4th AML Directive. The amendments bring the definition and determination of Beneficial Ownership in San Marino in line with the international standards.

Definition of beneficial ownership

Definition before November 2017	Definition since November 2017
."beneficial owner": (I) the natural person(s) who ultimately owns or controls the customer, when the latter is a legal person or an entity without legal personality; (II) the natural person(s) on whose behalf the customer acts.	"Beneficial owner": any natural person(s) who ultimately owns or controls, directly or indirectly, the customer or the natural person(s) in whose interest the business relationship, service or transaction is established, provided or carried out respectively.

In any case, the following are considered beneficial owners: 1) the natural person(s) that, directly or indirectly, owns more than 25% of the voting rights in a company or, in any case, by virtue of agreements or otherwise, is in a position to control voting rights equal to said percentage or exercises control over the management of the company, provided that it is not a company listed on a regulated market and subject to disclosure requirements consistent with or equivalent to Community legislation; 2) the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality which administer funds; where the beneficiaries have yet to be determined, the natural person(s) in whose main interest the entity is set up or operates; 3) the natural person(s) who exercises control over more than 25% of the property of an entity with or without a legal personality;	i. In case the customer is a corporate entity/ share capital company, the following shall be considered as beneficial owner: a) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares, units or instruments granting voting rights or through control via other means, b) if, after having exhausted all possible means no person under letter (a) is identified as beneficial owner, or if there is any doubt that the person identified is the beneficial owner, the natural person(s) who hold the position of administrative or managing official(s) of the legal entity. ii. The shareholding referred to in paragraph 1, letter a), shall be considered significant when its percentage is higher than 25%. iii. The provisions of paragraph 1 shall not apply to companies listed on a regulated market that are subject to disclosure requirements, which ensure adequate transparency of ownership information. iv. The provisions of paragraph 1 shall also apply in the event that the significant shareholding is held, in whole or in part, through bearer shares in foreign companies. In case the customer is a trust, the beneficial owners shall be: a) the settlor; b) the trustee(s), c) the protector, if any; d) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

68. These amendments to the AML Law mandate all legal entities and legal arrangements to maintain their own beneficial ownership information as well as to report to the register maintained by the Office of Industry and to the Trust Register by 19 August 2018 and by 31 December 2018, respectively.

The amendments (Article 23(5)(b)) also mandate that whenever there is a change in the shareholder structure or in another situation relevant for the purposes of this Law that affects the identification of the beneficial owner, it has to be reported to the Office of Industry and Trust Register.

69. It is noted that companies, associations, foundations and similar entities with legal personality must report information relating to their beneficial owners to the Office for Industry for the purposes of keeping such information in a register with restricted access. Resident trustees or agents must report information relating to the beneficial owners of the trust (settlor, trustee, protector, beneficiaries and any other natural person exercising ultimate control over the trust) who are natural persons to the Trust Register of the Republic of San Marino.

70. The data and information on beneficial ownership shall be reported by the legal representative of companies, associations, foundations, similar entities with legal personality and of the trustee, if a legal person, or by the trustee if a natural person. In case of doubts, the administrator and/or directors shall request information necessary to identify the beneficial ownership. If the shareholder fails to provide the requested information to the directors, or provides them with false or partial information, the administrator and/or director shall convene a meeting. If the shareholder fails to provide the elements necessary to identify the beneficial ownership, such shareholder shall not exercise his voting rights and any decisions adopted with his vote may be annulled. Similar provisions apply to associations, foundations, legal arrangements as set forth by article 22 para. 3 to para. 6 of the AML/CFT Law. Failure to disclose such information is sanctioned under article 66 of the AML/CFT Law (administrative sanctions from EUR 3 000 to EUR 100 000).

71. The report may be made electronically or in hard copy, in accordance with the instructions given by the Offices that keep the registers of beneficial owners. The report referred to above must include:

- name, surname, date and place of birth, nationality and residence address of each beneficial owner, as well as Social Security number or any other unique code provided by jurisdictions other than San Marino
- copy of a valid identity document
- the starting date of the beneficial ownership
- the reasons for which the reported parties becoming a beneficial owner.

72. The report must be made within six months of the establishment of the registers by the authorities or of the establishment of the company, association, foundation, similar entity with legal personality, or of the establishment

of a trust. Further, the report also has to be made in any case within six months of the change of the beneficial owner or whenever the change in the shareholder structure or in another situation relevant for the purposes affects the identification of the beneficial owner. The supervision and enforcement measures in respect of the old and new beneficial ownership information requirements are discussed below.

Fiduciary Companies

73. As discussed in the 2013 report (see para. 37) Domestic fiduciary companies operate in San Marino, holding customers' assets in their own names and charging fees for these services Foreign fiduciary companies can only open accounts or have shareholdings in San Marino companies. As also noted in the 2013 Report (see para. 97), Law no. 98 of 7 June 2010 established the Register of Fiduciary Investments, maintained by the Central Bank. According to this law, San Marino or foreign fiduciary companies, when receiving a mandate concerning the registration of shareholdings in San Marino companies, are obliged to send a written communication to the Supervisory Department of the Central Bank, providing the personal details of settlors, the extent of shareholdings for each of them and, if other than natural persons, the personal details of beneficial owners.

74. In addition, each subsequent change in the structure of settlors and/or their beneficial owners must be notified. The information stored in the Register of Fiduciary Investments is accessible, for supervisory and monitoring functions, by the following authorities: the Financial Intelligence Agency, the Single Court, the Fraud Squad of the Civil Police, the Office of Industry, Handicraft and Trade, the Office for Control and Supervision over Economic Activities. The CLO has access to information in respect of fiduciaries through the Central Bank of the Republic of San Marino (CBSM) under the MoU between the CLO and the CBSM (please refer to Element B.1 below for detailed discussion).

75. The CBSM authorities at the onsite advised that the fiduciary sector is shrinking of late (since 2008) and that as at March 2016 there were 8 fiduciary companies (in 2013 they were 14). The main clients of fiduciary businesses were explained to be both residents and non-residents and could be institutional or individuals. However information in respect of foreign companies serviced or the number of Sammarinese entities serviced by foreign fiduciaries was not available. In the review period 9 requests pertained to information held by fiduciaries in San Marino.

Beneficial ownership information – Enforcement measures and oversight

76. The beneficial ownership aspect of the 2016 ToR is new and was not specifically evaluated in the 2013 Report. As described above, the main requirement to maintain beneficial ownership information arises under the AML framework.

77. As regards AML/CFT supervisory functions, San Marino legislation provides that the competent body is the Financial Intelligence Agency ("FIA"). The FIA, therefore, carries out onsite and off-site supervision for all categories of obliged parties, following a risk-based approach. In carrying out its supervisory functions, the FIA enjoys wide powers to obtain data, information and documents and may impose administrative pecuniary sanctions for proven infringements of laws or regulations.

78. The FIA regularly carries out inspections, either onsite or off-site, of all categories of obliged parties (financial parties, professionals and non-financial parties). In the review period (2014-16) the FIA carried out 95 inspections of a varied nature and scope, which involved the verification of customer due diligence procedures including beneficial owner and registration requirements, and led to the remediation of the identified deficiencies. After such inspections the FIA applied the following sanctions for failure to perform or incomplete due diligence measures:

- one administrative sanction to a life-insurance intermediary (financial party)
- six administrative sanctions to accounting professionals and/or firms
- one administrative sanction to a dealer in precious metal and stones (non-financial party)
- one administrative sanction to a legal professional.

79. In respect of Notaries who play a significant role in San Marino with regard to CDD and availability of legal and beneficial ownership information, San Marino reported that out of about 120 notaries/lawyers, 7 were subject to on-site inspections in the review period. In view of the limited number of onsite visits, San Marino is recommended to ensure adequate coverage of notaries in oversight by FIA, particularly in view of the new AML requirements to maintain beneficial ownership information as per standards.

80. The interviews with the authorities of CBSM and FIA indicated a high level of skill and professionalism with respect to the international standards on beneficial ownership information and commitment to effective supervision of the same to ensure its availability for all legal entities and arrangements at all times.

81. The obligation for all entities to keep a register of their beneficial owners and report the same to the Office of Industry is in force under article 22 and article 23 of the Law 92/2008. San Marino is therefore recommended to monitor its supervisory regime to ensure that beneficial ownership information is available in all cases as per international standards in view of the recently amended AML requirements to maintain beneficial ownership information as per standards for all relevant legal entities and arrangements.

Availability of beneficial ownership information in Practice (Peer Experience)

82. During the current review period San Marino was expressly asked to provide beneficial ownership information in 8 cases to 2 of its EOI partners, who were satisfied with the quality of the information received. San Marino has reported that some of these cases involved identifying the beneficial owner of the shareholding in a company, i.e. the real owners who engaged the fiduciaries.

A.1.2. Bearer shares

83. As noted in the 2013 Report (see paras 102-107), the provisions of the Company Law (Law no. 47/2006) concerning the possibility for anonymous companies to issue bearer shares was repealed and bearer shares were required to be converted to registered shares by Law no. 98/2010 and all anonymous companies to be converted into joint stock companies. The 2013 Report noted that there were no longer any anonymous companies operating in San Marino. Hence San Marino's legal framework is fully in line with the ToR in respect of bearer shares.

A.1.3. Partnerships

84. As noted by the 2013 Report, Article 2 of the Law on Companies provides for the establishment of unlimited partnerships. Under San Marino law it is not possible to create legal arrangements such as partnerships without legal personality. The provisions of the Law on Companies applying to companies with share capital apply equally to partnerships. The 2013 Report noted that there was only one Partnership registered which had started liquidation procedures in 2005 (see para. 113). In the current review period, San Marino reported that there were zero partnership registered.

85. As noted by the 2013 Report, with regard to partnerships which were liquidated, books must be kept by the liquidator, by a notary public or an accountant (resident in San Marino) for five years and may be accessed by anyone (Company Law, Art. 113).

86. Identity information of partners is available with the Registry as per the provisions applicable for companies discussed above, and the beneficial ownership information in case of non-natural person partners is covered by the AML framework since they engage an AML obligated person (notary). In view of the new obligations under the amended AML Law mandating all legal entities to keep a register of beneficial owners and report the same to Office of Industry ensures the availability of beneficial ownership information as per ToR in the case of unlimited partnerships also.

Oversight and Enforcement

87. As noted above, in the current review period, there were no registered partnerships in San Marino which had to be subject to oversight. However, if any partnerships are established, this can only take place if the documents indicating the names of the holders of units (partners) are filed at the Commercial Registry of the Court. Further, following any change in legal ownership, a notary public is obliged to communicate the new names. Each year, at the time of the deposit of the financial statements with the Court, the Commercial Registry of the Court may verify the correctness and completeness of the documents in the relevant file and, accordingly, may conduct further inquiries. Any irregularities are to be reported to the competent offices for the application of the sanctions. Moreover, when the Fraud Squad of the Civil Police makes an inspection of an entity, it can also verify the formal aspects of proper keeping of corporate records, including identification information of partners and beneficial ownership of partnerships.

Availability of partnership information in practice

88. During the review period San Marino did not receive any requests on partnerships.

A.1.4. Trusts

89. As noted by the 2013 Report, in San Marino, the following three types of trusts exist, governed by Art. 7, paragraph 1 of Law no. 42/2010:

- Beneficiary Trust: The trustee becomes the holder of the assets in the interest of one or more beneficiaries. There are 113 such trusts as per the Trust Register.
- Purpose Trust: The trustee becomes the holder of the assets for a specific purpose pursuant to the law. There are 4 such trusts as per the Trust Register.

- Beneficiary and Purpose Trusts: The trustee becomes the holder of the assets in the interest of beneficiaries and for a purpose. There are 2 such trusts as per the Trust Register.

90. Trusts are taxable persons and income from trust activities is taxed at the ordinary tax rate applied to companies (17%) on a tax base equal to 10% of the actual trust income. Transfers from the settlor to the trustee and from the trust to the beneficiaries are exempt from taxation. However, information on the beneficiaries and settlors is not required to be provided in the tax return and information on beneficiaries is not available with the Tax Office.

91. A San Marino public notary always participates in the creation of a trust. He/she either draws up the trust instrument (public deed) made inter vivos in San Marino or notarises it by asserting its legality (private deed), or issues a declaration certifying for the legality under San Marino legislation of a trust instrument made inter vivos outside San Marino.

92. Article 18 of Law 42 of 2010 states that one or more natural or legal persons may act as trustee, without any specific requirements, providing that this office is held only for one trust (non-professional trustee). Trustees operating for more than one trust, as per Trust Law, are treated as professional trustees, regardless of compensation received, and should comply with the obligations and responsibilities deriving from San Marino AML or from that of other countries, provided that these laws implement European or equivalent directives. In addition, professional trustees residing in San Marino should be enrolled in the Register of authorised trustees kept by San Marino Central Bank, upon demonstration that they comply with additional requirements (not only "obliged party") including specific professional requirements. Only financial companies (supervised by the Central Bank), so-called "trust companies" and professionals being enrolled in the respective Register of lawyers/notaries or accountants can be enrolled in the Register of authorised trustees.

93. If the trustee of a trust under San Marino law is a person not residing in San Marino, it must co-operate with a professional enrolled in the San Marino registers (lawyers/notaries or accountants) acting as a "residing agent" in order to comply with every requirement in San Marino, including reporting, keeping of the Book of Events and making it available to local authorities. Trusts administered in San Marino can be governed by other laws (so called "foreign trusts") which also need to be registered in the Trust Register. However the officials in charge of the Trust Register advised during the onsite visit that there were zero foreign trusts registered as at November 2017. Under new provisions of AML/CFT law, the notion of TCSPs set forth under Art. 1, para. 1, letter n) introduces the definition of "trustees", when they receive a remuneration for their business, regardless of the number of trusts administered. Oversight and controls on non-professional trustees is

carried out by the FIA requesting and obtaining information and documents on trusts administered by them. San Marino advised further that in 2015, the FIA carried out such supervisory activity over all non-professional trustees obtaining documents and information needed to perform its supervisory duty. San Marino reports that there was non-compliance detected in respect of this annual supervisory activity of FIA.

94. Trustees administering more than one trust must comply with the obligations and responsibilities deriving from the anti-money laundering law (whether as a financial/fiduciary institution, professional, etc.) in addition, trustees residing in San Marino must also be enrolled in the public register of trustees allowed to professionally practice this office, held by San Marino Central Bank. The onsite interactions indicated that most trustees are non-professional and non-residents. As at the end of the review period, the number of registered trustees was 8 in number and they managed 16 out of the 119 registered trusts. The rest of the 103 trusts were managed by 16 non-professional trustees and 87 foreign trustees. Any trustee managing not more than one trust is treated as non-professional trustee, in terms of the Trust Act of San Marino whereas under the AML Law, a non-professional trustee is one who does not receive any remuneration for her/his services (irrespective of the number of trusts administered). However, as discussed above, San Marino advises that the CDD obligations under the new AML Law (including the reporting obligations of beneficial ownership information to Trust Register) apply to all trustees (non-professional/professional) and they are under the overall supervision of FIA and are also expected to file STRs, as appropriate. However, the magnitude of underlying assets managed by these non-professional trustees could not be ascertained. San Marino is nevertheless recommended to ensure adequate oversight of non-professional trustees in respect of availability of beneficial ownership information as per the recently amended AML Law.

95. As noted by the 2013 Report, an Office of the Trust Register of the Republic of San Marino to register trusts was set up under Law no. 42 of 1 March 2010. Registration in the Trust Register certifies the existence of documents which, under the aforementioned Law, must be recorded and retained in such Register.

96. Under the AML law, regardless of the type and residence, when a trust, through its trustee, establishes a business relationship or carries out an occasional transaction amounting to more than EUR 15 000 or relies on the professional services of an obliged party, the latter (the obliged party) must acquire all records required for the customer due diligence procedure and keep them for the time prescribed by the law (five years after termination of the business relationship or execution of the occasional transaction or provision of the professional service). With regard to trusts established under San Marino

legislation, professional trustees are obliged persons as well as "resident agents" when the trustees are non-resident. When providing services to lawyers (as well as accountants), trustees (professional and non-professionals) and "resident agents" must perform AML/CFT obligations including CDD requirements. It is also noted that under Article 1, paragraph 1, letter a), of Law 42/2010, a resident agent has to be a professional who is member of the Association of Lawyers and Notaries or of the Accountants' Association of San Marino.

Beneficial ownership information

97. With regard to the identification of the beneficial owners of trusts targeted by the AML Law, the FIA issued Instruction No. 2010-06 of 8 July 2010, on the steps to be taken to identify the beneficial owners of trusts: the natural person(s) who ultimately owns or controls the trust and in any case the natural person(s) who is beneficiary of more than 25% of the property of a trust; where the beneficiaries have yet to be determined, the natural person(s) in whose main interest the entity is set up or operates; and the natural person(s) who exercises control over more than 25% of the property of an entity without a legal personality. It is noted that this definition is not fully in line with the international standards since the definition of beneficial owner sets the threshold at 25%.

98. However, The Parliament of the Republic of San Marino (the Great and General Council), in application of the Monetary Agreement signed by San Marino and the European Union, has introduced amendments to its AML Law (92/2008) with effect from 11 December 2017. The amendments bring the definition and determination of Beneficial Ownership in San Marino in line with the international standards: "In case the customer is a trust, the beneficial owners shall be: a) the settlor; b) the trustee(s), c) the protector, if any; d) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates, e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means".

99. In addition, the amendments mandate all trusts (even in the case of trusts with non-resident or non-professional trustees) to maintain the beneficial ownership information with them as well as report to the register maintained by the Trust Register by 31 December 2018.

Record retention

100. As noted by 2013 report (para. 188) The Sammarinese AML/CFT Law requires the authorised parties to maintain all records related to customer due diligence and transactions for at least five years (Article 34) in respect of all customers (all relevant legal entities/arrangements). The same

legal position continued in the review period also. Therefore the retention requirements in San Marino are met under the AML obligations.

Oversight and enforcement

101. The Trust Register Office, established within San Marino Central Bank, is responsible for supervising trusts whether or not they are administered by financial institutions. It carries out monitoring activities to verify compliance with the obligations and with the formal requirement of legality every time that a request of registration is submitted. In case of irregularities or delays, the Office is entitled to impose relevant pecuniary administrative sanctions. Since its establishment in 2010 within the San Marino Central Bank, the Register Office has imposed and collected seven administrative fines from residing agents who did not meet the following legal requirements:

- failure to draw up the certification for the initial registration of the trust
- failure to submit the application for registration of subsequent changes
- failure to send the six-months request for update to the non-residing trustee.

102. In one case, the sanction was applied up to its maximum (EUR 15 000), while in the remaining cases, the sanctions imposed varied between the minimum (EUR 2 000 to EUR 3 000) and the maximum (EUR 10 000 to EUR 15 000) levels, depending on the number of days of delay in fulfilling the obligations. San Marino has reported in all these cases breaches consisted of failures to meet deadlines for the fulfilment of the obligations provided for by the Law. In the light of the above, it was not necessary to adopt remedial actions. Furthermore, after the application of the sanctions, no repeat breaches have been detected.

103. The Trust Register Office compiles every six months statistics based on the characteristics of registered trusts, to be used by the Special Court which is responsible for monitoring and supervising trusts.

104. The Trust Register Office reports to the Court only cases of questionable trusts detected (i.e. potential cases of sham trust). Furthermore, the Trust Register Office shall submit to the court questions concerning the application of the provisions in matter of publication requirements and procedures.

105. It also reports to the Special Court, as well as to the Financial Intelligence Agency, based on their respective responsibilities, any irregular case detected while carrying out its certificatory activity. With regard to sanctions, the Office compiles and updates a file containing all information about

the procedures initiated, the rule infringed and the relevant sanction imposed. In 2016 the Trust Register Office reported five cases to the Court (the relationship between Trust Register Office and the Court started in late 2015).

106. The special judicial authority for trusts (Special Court for Trusts and Fiduciary Relationships) is responsible for monitoring and supervising trusts. In carrying out its tasks, the Special Court can detect non-compliance with the registration and updating requirements with the Trust Register (or Book of Events) and can order the cancellation of a trust already registered.

107. The San Marino Central Bank also carries out off-site supervision of financial intermediaries acting as professional trustees. Based on such supervision, the intermediaries enrolled in the Register of Authorised Trustees are obliged to periodically (on a quarterly basis) send analytical data on each administered trust, including a description and value of all assets and liabilities of the trust. Moreover, financial intermediary trustees are required to provide upon request information on one or more trusts when asked by the supervisory authorities (CBSM/FIA). This situation has occurred on two occasions in respect of two trusts administered by two different trustees (one bank and one fiduciary company).

108. With regard to onsite inspections, the Central Bank, when inspecting a financial intermediary operating as a trustee, can also extend its monitoring powers to the trustee activity, given the legal and reputational risks related to this activity. However, such monitoring has not identified areas of any concern to date.

109. The discussions at the onsite visit with Central Bank representatives with regard to the supervision of ownership and accounting information with respect to trusts and the fiduciary services relating thereto revealed that there are 30 persons in the CBSM responsible for offsite/onsite supervisory function. If there are any indications of a breach, the CBSM authorities explained that the supervisory committee decides whether further inspections on the targeted areas relating to the breach or general inspections are required and specify follow-up activity required by the trustee. In respect of fiduciaries it was stated that the CBSM received requests for information from the CLO during the review period which were responded to based on the fiduciary mandates and internal databases held by the CBSM, with a usual response time of about three days to respond to the requests.

110. Moreover, in terms of prevention, the Office co-operates with the Special Court in organising annual training programmes dedicated to professional operators working in this field, in particular with regard to training on reporting requirements for trusts.

111. As regards the 119 trusts reported in the review period, it was explained at the onsite that the majority of trustees are non-residents and they

are also not engaged on a professional basis. The CBSM authorities explained that if a trustee is managing more than one trust, he/she has to be registered as professional trustee. The CBSM officials explained that on an annual basis the suitability to act as a trustee is checked by the CBSM and it is mandatory for registered trustees to go through a training course, failing which they forfeit their licence. The list of registered trustees is available on the website of Central Bank of San Marino which in November 2017 showed eight trustees out of which only one was acting in an individual capacity. The other seven trustees were corporate entities providing trustee services.

112. At the onsite the CBSM authorities further advised that every trust created under Sammarinese law (anywhere in the world) has to be registered with the Trust Registry of CBSM (Central Bank of San Marino) without which the trust is not legally enforceable. In respect of foreign trusts, although they have to be registered with the Trust Register, the CBSM has clarified that in the current review period there are none registered.

113. The Trust Register also maintains information about settlor(s), beneficiary(ies) and trustee(s). Law 42/2010 provides that if a trust is administered in another country but is subject to Sammarinese trust law, a resident agent (resident in San Marino) has to be appointed. The resident agent must be a lawyer/accountant covered under AML as an obligated person. In respect of trusts with non-professional trustees (those who operate for only one trust at a time) it was clarified that they are not in the registry, however the FIA controls the non-professional trustees (although there is no registry, given that they administer "family trusts" they are in general nominated by the settlor within its family. However in some cases non-professional trustees are also members of the association of lawyers/certified accountants) and they are expected to file STRs, and to maintain all the ownership information as per the AML obligations.

Availability of trust information in practice

114. During the review period San Marino did not receive any EOI requests relating to trusts. Also, there has been no adverse peer input in this respect. The lawyer and accountant interviewed at the onsite demonstrated good knowledge of the CDD procedures to determine beneficial ownership in various situations, which would enable San Marino to respond in an effective manner if a request were to be received in future in respect of trusts.

A.1.5. Foundations

115. The 2013 Report noted that the legal and regulatory framework for foundations and associations conformed to the international standard. Since then, the new Law no. 101 of 1 July 2015 regulates foundations and public

benefit non-profit organisations (ONLUS). At the end of 2017, 51 foundations were registered.

- Foundations mean entities governed by such Law, having legal personality, organisation of goods, assets and financial independence, not pursuing the objective of making a profit, other than companies, which do not carry out any economic activity, established by one or more founders, natural and/or legal persons, allocating, in full autonomy, their assets only to achieve a specific public benefit objective in one of the sectors mentioned in the relevant law. (Art. 4(1), Law no. 101 of 1 July 2015)
- Public benefit non-profit organisations (ONLUS) mean private entities, with legal personality and other than companies, also established in the form of foundations, which pursue exclusively social solidarity purposes without making any profit. They shall carry out activities pursuing altruistic purposes and shall be prohibited from carrying out other activities, except for directly related ones. (Art. 5(1), Law no. 101 of 1 July 2015)

116. Foundations can be established only for public benefit purposes, cannot make distributions to their founders, and the funds are irrevocably attributed to the foundation. There were 51 foundations registered with the Single Court Registry at the end of the review period and there were no EOI requests received in respect of foundations in the review period.

117. The requirements for foundations are provided for by Art. 6 of Law no. 101/2015. Foundations and public benefit non-profit organisations must be registered in the Register of Foundations, held at the Court Registry, by depositing the documents referred to in Art. 7 of Law no. 101/2015. The Register is public and anyone can have access thereto.

118. Under the new law, the identity of the founder cannot be modified, and such information is kept by the Court Registry, where the memorandum of association of the foundation is deposited, until its removal from the register. A notary who fails to comply with the filing of the memorandum of association of the foundation within the time limits specified in Article 16, paragraph 1, or who fails to file the documents issued by him/her and amending the articles of association within the time limits specified in Article 17, regardless of and in addition to the sanctions that may be imposed independently by the competent professional association, would be punished with a pecuniary administrative sanction of EUR 2 000. However there were no instances of applying any sanctions for irregularities by foundations in the review period.

119. With regard to the identification of the beneficial owners, the FIA issued Instruction No. 2010-05 of 8 July 2010, on the steps to be taken to

identify the beneficial owners of foundations and associations. It is not fully in line with the international standards since the definition of beneficial owner sets the threshold at 25% ownership: Beneficial owners are: 1) the natural person(s) who ultimately owns or controls the customer, when the latter is a legal person or an entity without legal personality 2) the natural person(s) who is beneficiary of more than 25% of the property of a foundation or other arrangements with or without legal personality which administer funds; where the beneficiaries have yet to be determined, the natural person(s) in whose main interest the entity is set up or operates; 3) the natural person(s) who exercises control over more than 25% of the property of an entity with or without a legal personality.

120. However as noted above, in view of the newly transposed EU 4th AML directive requirements, the definition of beneficial owners for foundations is amended as follows: if the customer is a foundation or similar entity with or without legal personality, the following shall be considered as beneficial owners: a) the founders, if alive; b) the beneficiaries, when identified or easily identifiable; c) the owners discharging managerial or administrative responsibilities. San Marino has explained that the term "owners" in this context means the persons entrusted with the representation and administration of the foundation. As a result, beneficial ownership information in respect of foundations, as per the standard, is available in San Marino subject to the effective supervision measures for the same.

Other relevant entities and arrangements

121. San Marino's laws allow for Non-profit associations (a plurality of people who associate for the purpose of pursuing a non-lucrative common purpose and the majority of whom reside in San Marino may form a non-commercial association) whose organisation and administration are governed by the agreements reached by the associates, in compliance with the laws and regulations in force.

122. By 31 December of every year, associations in San Marino are required to submit an updated list of their members to the Commercial Registry of the Court, which monitors the fulfilment of such obligations (Art. 37 of Law no. 129/2010). Such information is kept by the Commercial Registry until the association is removed from the register.

123. Associations cannot be established for profit. San Marino further advises that it is also not possible for non-profit entities to own other legal entity(ies) set up for profit. There were 290 associations registered with the Single Court Registry at the end of review period and there were no EOI requests received in respect of associations in the review period.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

124. The 2013 Report concluded that all entities and arrangements were required to maintain adequate accounting records, including underlying documentation for at least five years (see 2013 Report, paras. 171-190). Element A.2 was determined to be "in place" and rated Compliant.

125. Under the Sammarinese Company Law, domestic companies and partnerships (including foreign partnerships) are required to maintain accounting records. The trust law and laws governing foundations oblige the respective entities to maintain accounting records and data. Pursuant to the amendments to the relevant laws in 2011, only individuals (sole proprietors) may keep simplified accounting records. The Commercial Registry of the Single Court also maintains the balance sheets of companies, which are deposited annually with them. Accounting records and underlying documentation are maintained by the relevant entities and arrangements.

126. The oversight of relevant entities and arrangements was satisfied through a combination of commercial law, tax compliance, the supervision of the CBSM, Court Registrar and Office for Control and Supervision of Economic Activities (OCSEA).

127. However, the 2013 Report also noted that, in the three years under review (2009, 2010 and 2011), there had been some instances where accounting information was not available. These cases mostly related to companies that carried out fraudulent activities and that did not keep accounting records. In view of the then recently brought in penalties under the Company Law of up to EUR 25 000 to sanction defaults with regard to the keeping of accounting information, and even though San Marino had already acted to prevent companies from carrying out fraudulent activities and not keeping accounting records, it received a recommendation to monitor the enforcement measures properly so as to ensure the availability of accounting information as per the Terms of Reference.

128. In the current review period, there were no instances of imposition of the penalties brought about in 2011 under the Companies Law but OCSEA's investigations have resulted in the revocation of the license of one business and suspension of one other licence. San Marino also advises that the Tax Office has imposed sanctions in respect of accounting information, although San Marino was not able to provide details of the specific nature and result of the sanctions imposed during the review period. This made it difficult to fully assess the effectiveness of application of dissuasive sanctions/enforcement measures to ensure availability of accounting information in respect

of all entities and arrangements at all times. San Marino should continue to monitor the application of the enforcement measures so as to ensure the availability of accounting information consistent with the standard, but the recommendation is removed from the table of recommendations below.

129. During the current review period San Marino received 39 requests for accounting information and did not report any issues in obtaining such information in practice. Most of the requests were satisfied within 90 days and peers were generally highly satisfied with the responses sent by San Marino.

130. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

131. The Standard is met by a combination of commercial law and tax law. The various legal regimes are analysed below.

A.2.1. General requirements

Company Law obligations of companies and partnerships

132. As noted by the 2013 Report (see paras 171 to 176) provisions of the Company Law ensure that mandatory accounting records must be kept in the registered office of the company or partnership for five years or filed with a lawyer and notary public or with an accountant, duly enrolled in the relevant San Marino professional register. It was also noted that failure to produce such documents results in the application of sanctions (paragraph 5, Art. 72 of Law no. 47/2006). In respect of foreign entities, it was noted that there are no record-keeping obligations under commercial law, but they would be covered as per the tax law requirements (see discussion below).

Trusts

133. The 2013 Report, with regard to trusts, concluded that the compliance with the standard is ensured by obligations of trustees to keep a book of events and accounting records in a systematic and orderly manner as per the Trust Law and Delegated Decree No. 49/2010 which govern professional trustees, and pursuant to Article 4 of Law no. 38/2005 (Taxation of Trusts). The retention period for the above-mentioned accounting documents is 5 years after the tax period to which they refer and, in any case, until completion of the assessments relating to that tax period. In addition, Art. 4 of Delegated Decree no. 49/2010 provides that non-professional trustees are obliged to retain the documents relating to the trusts they administer for 5 years after termination of their office. It is also noted that non-professional trustees (administrators of a single trust), though not qualified as obliged parties, are in any case required to retain all trust-related documents for the duration of their office and for five years following the date of its termination pursuant to the AML Law.

Tax law

134. The provisions of the Tax Law mandate that accounting records for the purposes of the tax law shall be kept for 5 years after the tax period to which they refer and, in any case, until completion of the assessments relating to that tax period (Article 100 of Law no. 166/2013). This applies to all types of companies, partnerships, foundations and trusts, whether resident or not as long as they are taxable in San Marino.

Liquidated companies

135. The 2013 Report (see paras 187 to 190) found that the 5-year retention requirements under company law is in line with the standards and the same provisions continue to apply in the current review period. San Marino has further advised that that in the case of liquidation, the entire period of liquidation is considered as a single tax period and therefore the retention requirements continue to operate.

A.2.2. Underlying documentation

136. The 2013 Report (see paras 184 to 186) found that the requirements under company law and the Delegated Decree No. 51/2010 require that the underlying documentation relevant to accounts needs to be maintained for all types of companies, partnerships, foundations and trusts. There have been no changes to the legal framework in this respect and San Marino has answered 39 requests for accounting information in the current review period which included underlying documentation also, to the satisfaction of requesting

peers. Further, with respect to the "simplified accounting rules for sole proprietors" with revenues under EUR 800 000 (see 2013 Report, paras 180-183), as noted by the 2013 Report, San Marino is invited to continue to ensure that this allowance for simplified accounting records does not in any way interfere with the effective exchange of information in tax matters.

Oversight and enforcement of requirements to maintain accounting records

137. As noted by the 2013 Report (see paras 193 to 199), the availability of accounting records and underlying documentation of all types of companies, partnerships, trusts and foundations is ensured by adequate oversight and enforcement measures by the Tax Authorities, OCSEA, FIA and CBSM both by off-site and onsite inspections. The 2013 Report also noted the sufficiency of sanctions in San Marino's legal framework to address non-compliance with respect to maintenance of accounting information and underlying documentation as per the standards. However, in view of the then recently brought in penalties under the Company Law up to EUR 25 000 to sanction defaults with regard to the keeping of accounting information, and even though San Marino had already acted to prevent companies from carrying out fraudulent activities and not keeping accounting records, a recommendation was made for San Marino to monitor the enforcement measures properly so as to ensure the availability of accounting information as per the Terms of Reference.

138. It is also noted that OCSEA is mandated to prevent and counter fiscal fraud, similar illicit behaviours, and trade distortions and report to the Congress of State, for revocation of the business licence of economic operators who carry out activities in such a way as to undermine the prestige and interest of the Republic of San Marino (Article 76, Law No. 130/2010). It is also noted that OCSEA has increased its strength of employees from 2 employees to 5 employees by the end of the review period.

139. The OCSEA has in the review period, sent 104 administrative verification requests to the Fraud Squad of the Civil Police, divided up as follows: 29 in 2014; 34 in 2015; 41 in 2016. During verifications, the Fraud Squad examined corporate books and acquired documents such as: invoices sent and received, delivery notes of goods, accounts of customers and suppliers, profit and loss accounts and balance sheets, journal and banking documents. Beneficial owners have been requested to the Register of Fiduciary Investments of the Central Bank by the OCSEA before sending the written request for administrative verification to the Fraud Squad. Verifications carried out by the Fraud Squad of the Civil Police did not reveal any irregularities concerning the keeping of corporate records. San Marino reported that in seven cases, irregularities related to the keeping of accounting records were reported to the Tax Office. As discussed below, San Marino advises that

penalties were also imposed by the Tax Office as a result of their audits, in respect of accounting information.

140. In the current review period, there were no instances of imposition of the penalties under the Companies Law brought about in 2011 but the OCSEA's investigations have led to the revocation of one business licence and one suspension. San Marino has advised that the Tax Office has imposed sanctions in respect of failures to maintain accounting information and the oversight measures in the review period appeared generally sufficient to ensure the availability of accounting information as per the standard in respect of all entities and arrangements at all times (tax filings are near 100% and the audit rates are about 20% for corporate taxpayers). However, the specific nature and result of the sanctions imposed could not be ascertained, rendering it difficult to fully assess the effectiveness of application of dissuasive sanctions/enforcement measures to ensure availability of accounting information in respect of all entities and arrangements at all times. While it is noted that the oversight in respect of ToR A.2 is generally sufficient, San Marino should continue to monitor the application of the enforcement measures so as to ensure the availability of accounting information consistent with the standard.

Availability of accounting information in practice

141. In the previous review period, there were some instances where accounting information was not available. These cases mostly related to companies that carried out fraudulent activities and that did not keep accounting records. However, San Marino has since then strengthened its penalties (see 2013 Report para. 199) and in the current review period has successfully responded to 39 requests for accounting information to the satisfaction of peers.

A.3. Banking Information

Banking information and beneficial ownership information should be available for all account holders.

142. The 2013 Report concluded that element A.3 was determined "in place" and rated Compliant. The 2013 Report noted that San Marino had put in place a mechanism to close down bearer passbooks and bearer certificates of deposits, and to identify their owners. Moreover, the FIA had carried-out extensive onsite and off-site inspections, applying sanctions where appropriate, to ensure that banks applied identification measures. At that time San Marino had not yet received any EOI requests for banking information.

143. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. In this regard, as noted above (in Element A.1.1), in view of the newly transposed EU 4th AML Directive requirements, beneficial ownership information as per the standard will be available in San Marino subject to the effective supervision measures for the same in all cases. San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that accurate beneficial ownership information is available with all Banks in all cases as per international standards.

144. During the current review period San Marino received 30 requests for banking information. San Marino was able to provide the information in all these cases in around 90 days to the satisfaction of peers.

145. The new table of determination and rating remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

A.3.1. Record-keeping requirements

146. There are a number of regulatory sources that lay down obligations for banks to maintain documents and information on customers and transactions performed. These obligations are imposed for different purposes and fall within the fields covered by AML/CFT, commercial, tax and banking legislation. The main record-keeping requirements are contained in the AML/CFT legislation, which provides that banks must record/retain CDD information and documents for the whole duration of the relationship and for at least 5 years after the date of its termination (see 2013 Report paras 200 to 202).

147. Banks are also required to record/retain information and documents relating to the transactions executed by customers for at least 5 years following the date of their execution (Article 34 of Law no. 92/2008). Banking

and financial legislation (Law on Companies and Banking, Financial and Insurance Services and CBSM regulations) also establishes that banks must keep information on contracts and transactions for at least 10 years for two reasons: to ensure that customers receive extracts or copies of such information/documents and by reason of the limitation period (10 years) applying to the rights arising from contracts concluded by authorised parties in the exercise of reserved activities. Banking and financial legislation also lays down specific organisational requirements that authorised parties must fulfil to ensure that data, documents and information on the activities carried out (including disaster recovery procedures) are properly maintained. Banks and other authorised parties are subject to the provisions of the Company Law and tax laws with respect to maintenance of accounting records, corporate books and their underlying documents, as well as of information and documents they hold to fulfil tax obligations both as taxpayers and as withholding agents.

148. With respect to retention requirements, it may be noted that AML/CFT legislation, formed by Law no. 92 of 17 June 2008 and the instructions issued by the Financial Intelligence Agency require:

- Recording and retention of customer due diligence information and documents throughout the entire duration of the relationship and for at least 5 years from the date of its termination
- Recording/retention of information and documents relating to transactions conducted by customers for at least 5 years from the date of execution
- In case of revocation, termination or lapse of the authorisation to carry out a reserved activity, the financial party, even if still undergoing ordinary or compulsory administrative liquidation, shall appoint a competent person who retains, for the fulfilment of AML/CFT obligations, documents and electronic archives for at least five years or for a longer period, if required by the Agency.

149. As already mentioned above, the aforementioned retention periods may be extended in accordance with other provisions on retention of documents and information related to banking/financial or commercial/tax discipline.

Beneficial ownership information on account holders

150. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. The obligation to identify beneficial owners of business relationships and occasional transactions (outside a business relationship) is enshrined in Law no. 92 of 17 June 2008 (Article 22). The identification process of beneficial owners is an integral part of the customer due diligence procedure. Current provisions stipulate

that banks shall apply CDD measures when establishing a business relationship or executing an occasional transaction. They must also monitor and update such information over time, with a frequency determined on a risk-based approach. Documents and information on customers, relationships and transactions to which the retention obligations described in above apply also to beneficial owners.

151. Current AML/CFT legislation (Art. 29 of Law 92/2008) allows banks, as obliged parties, to rely on customer due diligence carried out by third parties with whom the customers have business relationships or whom have been tasked by the customers with carrying out an occasional transaction. For this purpose, third parties must issue, if requested by the customer, a document attesting that they have met customer due diligence requirements. Also in this case, the ultimate responsibility for meeting customer due diligence requirements remains with the obliged parties, which must satisfy themselves that the third parties are able to fulfil CDD requirements and that they immediately make available to them, without delay and upon simple request, the information acquired while performing CDD.

152. Until recently, although the AML framework of San Marino did capture important elements of the Beneficial Ownership definition under the 2016 ToR, it was not fully in line with the international standards (see Element A.1.1). Further, in respect of trusts and foundations since the definition of beneficial owner set the threshold at 25% ownership, the requirements under the standards were not met in terms of identifying all the beneficial owners in all cases in the review period. In practice, this did not have any impact on exchange of information as there was no adverse peer input in respect of San Marino's responses in the review period. However as noted above (in Element A.1.1), in view of the newly transposed EU 4th AML Directive requirements, beneficial ownership information as per the standard must be available in San Marino, subject to the effective supervision measures for the same, in all cases. San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that accurate beneficial ownership information is available with all Banks in all cases as per international standards.

Enforcement provisions to ensure availability of banking information

153. Responsibility for supervision of compliance with AML/CFT requirements lies with the Financial Intelligence Unit (FIA). The AML Law also obliges authorised parties to make available the documents and information maintained to the FIA. The FIA has issued Instruction No. 01/2012 prescribing the requirements relating to registration and maintenance of the data and information on customers as per Art. 34 of Law 92/2008. Law No 73/2009 and Decree Law No 134/2010 provide sanctions for violations

of CDD obligations and non-compliance with the registration and reporting obligations. Failure to comply with CDD requirements is sanctioned with an administrative fine from EUR 5 000 to EUR 70 000. Banks and other financial parties are subject to the sanctions provided for by the Company Law and tax laws relating to the keeping and maintenance of accounting records, corporate books and information and documents required to fulfil tax obligations.

154. The FIA is the designated authority empowered to apply administrative sanctions, whereas the Law Commissioner of the criminal section of the court is responsible for applying criminal sanctions under the AML/CFT Law. As part of its supervision activities, the CBSM carries out specific inspections, partial inspections and general inspections. The CBSM closely co-ordinates its supervision activities with the FIA and the judicial authority. In the current review period, the details of onsite inspections carried out by CBSM are as follows:

	2014			2015			2016		
	Banks	Non-bank financial companies	Insurance companies and intermediate	Banks	Non-bank financial companies	Insurance companies and intermediate	Banks	Non-bank financial companies	Insurance companies and intermediate
Total onsite inspections	12	4	5	20	2	4	16	2	5
of which at wide range	0	1	0	0	2	1	1	0	0
of which targeted on selected issues	12	3	5	14	0	2	14	1	4
of which in co-operation with other authorities	0	0	0	6	0	1	1	1	1
Total	**21**			**26**			**23**		

155. During the current review period the FIA also carried out a total of 95 inspections of a varied nature and scope. During inspections, regular training and exchanges of views with obliged parties, the FIA provides operational suggestions and explanatory clarifications, including with regard to registration and record-keeping requirements. The total amount of administrative pecuniary sanctions imposed by the FIA (which involved the verification of customer due diligence procedures including beneficial owner and registration requirements) and led to the remediation of the identified deficiencies in the reference period is as follows. San Marino explained that the increase of sanctions in 2016 is related to on-site inspections at accountants and company service providers for failures to comply with AML/CFT requirements.

Year 2014	EUR 19 000
Year 2015	EUR 22 000
Year 2016	EUR 89 300

Availability of banking information

156. As noted by the 2013 Report, there were no banking requests in the previous review period. However in the current review period, there were 30 requests that were answered by San Marino within 90 days to the satisfaction of peers. The nature of the banking information exchanged with peers covered information like KYC information as well as statements of banking transactions.

157. The Banking professionals interviewed at the onsite displayed good understanding of international standards and obligations to carry out effective due diligence procedures to maintain accurate beneficial ownership information. It was explained that usually the legal representative of the future client comes to open an account, bringing the information on what type of relationship they need and who is the beneficial owner of the legal entity/arrangement.

158. Sammarinese banks verify the beneficial ownership information by requesting all the documents like the certificate of establishment of companies (and for documents issued abroad, certified with an apostille stamp) and further verify from the book of shareholders, from databases and checking the antecedents of the persons identified as beneficial owner(s). Further, Sammarinese Banks update the beneficial ownership information on a risk (irrelevant, low, medium and high) based approach.

Part B: Access to information

159. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

160. The 2013 Report found that the Central Liaison Office (CLO) had broad and specific powers to access information in order to respond to a request for information in relation to a liability to foreign tax. During the previous review period Sammarinese authorities used information gathering powers in order to obtain bank information, and accounting information in three requests, to the satisfaction of peers.

161. Since the 2013 Report, no changes have been made to the legal framework and there have been no difficulties faced by San Marino in the review period to access information and effectively exchange it with partners.

162. In the current review period, San Marino received 361 requests and used its access powers frequently. Further, San Marino has not reported any difficulties in accessing the information while responding to these requests from partners in the review period.

163. The table of determination and rating remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

B.1.1. Ownership, identity and bank information

164. The 2013 Report analysed the procedures applied in the case of obtaining information generally and more specific rules for obtaining bank information. Generally, the same rules continue to apply in the current review period.

Accessing information generally

165. As noted by the 2013 Report (see paras 228-254) the CLO has in place an effective system to gather information for EOI purposes. It can access information directly, or obtain assistance from other authorities to access information, when needed. The collaboration between the CLO and the other authorities appears to be good. In practice, during the review period, although the CLO was capable of obtaining information by itself, the CLO mostly relied on its collaboration with other authorities for the purposes of EOI with partners, apart from direct access to banking information.

166. As noted by the 2013 Report (see para. 366) the CLO may rely on other public authorities for obtaining information for EOI purposes as per Law no. 95/2008, as amended by Decree Law no. 36/2011, which establishes that the CLO has complete and unlimited access, including through electronic means, to the data and information available in registers, archives and professional registers kept by the public administrations. In the current review period, as per paragraph 1 of Art. 13 of Law no. 174/2015, the CLO has access, including through electronic means, to the original versions, without

any limitations, of the data and information available in records, archives, electronic databases and professional registers kept by public administrations, public entities and professional associations.

167. The powers of the CLO to access and collect information concerning criminal tax matters are the same as for civil tax matters. However, in the framework of criminal investigations and proceedings in San Marino, the data and information under the control of judiciary may be provided to the CLO only upon prior authorisation by the Judge. This does not mean that San Marino has to request the permission of Judge to provide information in response to an EOI request, for example a bank account requested by the partner for criminal tax investigations. However, as explained by San Marino, of for example, accounting information is under seizure by the authorities of San Marino, in order for CLO to access the same, the authorisation of Judge is necessary.

168. If there are objective circumstances connected with the ongoing investigations and stemming from the need to carry out investigations to ensure the confidentiality of the evidence of the offence concerned, the acquisition and use of information sought by the CLO may be postponed upon request of the judicial authority through a reasoned decree of the investigating Law Commissioner (judge).

169. San Marino has further explained that, in practice, there have been cases involving activities subject to criminal proceedings in San Marino with Italy under a 1997 agreement (for co-operation on combating fraud and exchanging information) wherein CLO has been able to obtain the necessary authorisation from the judge to acquire the relevant documents within a reasonable time and to fulfil the requests in a timely manner. In other cases San Marino has provided an update on the status of the request, explaining the reasons for the delays.

170. The CLO may also rely on other offices and authorities as provided for in Art. 12 of Law no. 174/2015. In carrying out its functions, the CLO may rely on the co-operation of the Tax Office, the Commercial Registry of the Court, the Office for Control and Supervision over Economic Activities, the Office of Industry, Handicraft and Trade, the IT, Technology, Data and Statistics Organisational Unit and other offices of the public administration and may also request the co-operation of the Corps of the Police Department, in particular the Fraud Squad of the Civil Police, for the acquisition of information and retrieval of documents held by relevant stakeholders.

171. The CLO may also request the co-operation of the Central Bank of the Republic of San Marino and of the Financial Intelligence Agency for a thorough analysis of banking and financial aspects, without prejudice to Law no. 165/2005 and subsequent amendments. All the aforementioned offices

and authorities, as well as any other party, are required to process requests in the manner and within the time specified by the CLO.

172. There are also specific memoranda of understanding between the CLO and, respectively, the Office for Control and Supervision over Economic Activities, the Central Bank, the Financial Intelligence Agency and the Tax Office, which define the forms of mutual co-operation and of access to available data and information.

173. San Marino has provided the following break-down of information sought from various agencies in the review period, noting that about 321 requests were received in 2016 alone, pertaining to ascertaining tax residency (San Marino advised that the agencies although mainly received the same request (i.e. tax residency control) in respect of the useful information they hold for a proper answer):

	2014	2015	2016
Fraud Squad	0	0	15
Court Registry	3	3	16
Tax Office	3	2	324
Civil Police	1	1	322
Gendarmerie	1	1	323
Fortress Guard	1	1	1
Vital Statistics Office	0	1	321
Labour Office	1	1	321
Cadastral Office	2	1	1
Vehicle Registration Office	1	0	0
Civil Aviation and Maritime Navigation Authority	1	0	0
The Patents and Trademarks Office	1	0	0
Central Bank	1	2	6
Financial Intelligence Agency	1	1	1

Accessing beneficial ownership information

174. San Marino has reported that the same information gathering powers in the case of legal ownership information apply in the case of beneficial ownership. In general, the CLO obtains the beneficial ownership information from the Central Bank (through the register of company shareholdings) and obliged parties and the Financial Intelligence Agency. San Marino has also clarified that the CLO has the power to obtain, for tax purposes, ownership, identity and accounting information kept also for the purposes of the anti-money laundering based on a Memorandum of Understanding with the Financial Intelligence Agency.

Accessing bank information

175. As noted by the 2013 Report (see para. 225), it is not necessary for the CLO to resort to any special procedures to access banking information as bank secrecy may not be invoked against the CLO. The same legal framework continues to operate with respect to the CLO's powers to access banking information and during the review period San Marino has responded to 30 requests for banking information without any difficulty in a timely manner to the satisfaction of requesting peers. As also noted in the 2013 Report, the CLO generally obtains information in possession of banks by sending a request letter to the bank, however, whenever an investigation concerning a bank account is required, the CLO may also seek assistance from the Central Bank and the Financial Intelligence Agency. The CLO approached banks directly in all 30 cases during the review period and in 12 cases it also consulted CBSM/FIA.

B.1.2. Accounting records

176. The powers described in section B.1.1 relating to information other than information held by a financial institution can be used to obtain accounting information. There are no particular rules that apply to accounting records that would impede the use of these powers. The CLO often requests the collaboration of the Tax Office in view of obtaining accounting information relating to all types of companies, partnerships, trusts and foundations that are Sammarinese residents or when the CLO needs original copies of such records and their underlying documentation. The CLO has direct, complete and unlimited access, including through electronic means, to data and information available in records, archives, and databases of the Tax Office.

177. The Tax Office can provide information available in tax files, including tax returns, or in documents collected in regard to import tax and special tax on petroleum products or obtained during audit or other control activities. The Tax Office is sufficiently empowered to carry out control activities on taxpayers and it can obtain information and documents held by the persons concerned. To perform such controls or obtain the relevant documentation, the Tax Office usually relies on the Fraud Squad of the Civil Police.

178. The tax authorities indicated that they have been obtaining accounting information for tax audit purposes and can also request such information for EOI purposes. On being requested in writing by the CLO, the Tax Office is obliged to provide original copies of documents. The Memorandum of Understanding between the CLO and the Tax Office establishes that the Tax Office should provide the requested information within a time limit of 15-20 days. The time limit is the same for all other authorities and third parties. However it may be extended in case of particularly complex requests for

information, within the time limit of 4 weeks as provided for in the Exchange of Information Working Manual.

179. During the current review period San Marino received 39 requests for accounting information and San Marino responded to these requests without any difficulty in a timely manner to the satisfaction of requesting peers.

B.1.3. Use of information gathering measures absent domestic tax interest

180. As stated in the 2013 Report (see para. 255), there are no provisions in San Marino laws that restrict the information gathering powers of the CLO for lack of domestic tax interest. The legal framework in this regard has not changed in the current review period. San Marino has reported that, in practice, during the peer review period there were some cases where the requested information concerned a person who was not a taxpayer and there was no domestic tax interest in obtaining this information. This circumstance occurred in several cases where the requests concerned banking information that the CLO provided.

B.1.4. Effective enforcement provisions to compel the production of information

181. The 2013 Report noted that the powers of the CLO or other authorities (OCSEA, CBSM, Tax Office, Office of Handicrafts, Court Registry, etc.) to obtain information are backed by enforcement powers to compel production of information in cases of non-compliance by the information holders (see 2013 Report, paras 256-264). The CLO has the power to collect information directly from persons holding or controlling the information, and non-compliance with these obligations can be sanctioned with adequate fines/penalties. In addition, OCSEA has powers for search and seizure. Although the use of enforcement powers has not been required in order to obtain information for exchange purposes, in the current review period these powers have been used in domestic tax cases successfully.

B.1.5. Secrecy provisions

182. There are two types of secrecy or confidentiality provisions that are relevant for the purposes of this section: bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

Bank secrecy

183. As noted by the 2013 Report (see paras 265-266) there are no provisions of bank secrecy or professional secrecy in San Marino that prohibit or restrict disclosure information to the CLO. There were no changes to the legal framework in the current review period.

Professional secrecy

184. With regard to attorney client privilege, as noted by the 2013 Report (see paras 270-273), the practices are in line with the international standard, whereby professional secrecy can only be claimed with respect to information received while performing the task of defending or representing clients during a judicial proceeding or in connection with such proceedings, including advice on initiating or avoiding proceedings. As noted by the 2013 Report, the amendment by Decree Law No. 36/2011 to Article 11 of Law No. 95/2008, dealing with the powers of the CLO, explicitly clarified the scope of legal privilege applicable to lawyers and accountants for the purposes of international exchange of information in tax matters and explicitly provides that official and professional secrecy cannot be claimed when the CLO requests information to perform its functions.

185. This position of law continued during the review period and the lawyers and accountants met with at the onsite also indicated good knowledge of the legal position on attorney-client privilege in San Marino with respect to information requests under exchange of information mechanisms for tax purposes.

186. The CLO requests information from professionals (lawyers, notaries, and accountants) in a very small proportion of cases (1%). As in the previous review period, during the current review period, in practice, no one has opposed the provision of information to the CLO or to other authorities acting on request of the CLO on the basis of claims of professional privilege.

187. During the review period, in practice, there have been no cases where Legal Professional Privilege was an impediment to obtaining information.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

188. The 2013 Report noted that San Marino did not have any notification requirements. The 2013 Report also found that there were no issues regarding appeal rights and the element was determined to be in place and rated Compliant.

189. As noted by the 2013 Report (see para. 275), under San Marino legislation, it is possible to initiate proceedings before an ordinary judge to protect subjective rights. In cases of violation of legitimate interests, the person concerned may start proceedings before administrative judges. In both cases, the commencement of proceedings is not an obstacle to exchange of information and the CLO may in any case transmit data to the requesting jurisdiction.

190. There were no changes to the legal framework in the current review period. As in the previous review period, the Sammarinese authorities report that there were no cases of appeals being brought in EOI matters in the current review period.

191. The 2016 ToR have introduced a new requirement where an exception to notification has been granted – in those cases the 2016 ToR require that there must also be an exception from time-specific post-notification. San Marino's law does not require pre or post notification and therefore the change made in ToR did not have an impact in this review. Element B.2 continues to be in place and Compliant.

192. The table of determination and rating remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Part C: Exchanging information

193. Sections C.1 to C.5 evaluate the effectiveness of San Marino's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all San Marino's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether San Marino's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether San Marino can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

194. The 2013 Report concluded that San Marino's network of EOI mechanisms was "in place" and was rated Compliant. At that time, San Marino had 18 Double Tax Conventions (DTCs) and 26 Tax Information Exchange Agreements (TIEAs). All of these agreements met the standard except for 2 DTCs (with Cyprus[3] and Seychelles) and 3 TIEAs (with Austria, the Czech Republic and Vanuatu). In addition to these bilateral mechanisms, between EU Member States and San Marino there was an Agreement providing for measures equivalent to the EU Savings Directive, which established

3. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

the application of a withholding tax on interest within the scope of the Agreement or, in case of express request for disclosure by the beneficiary of the income, the automatic exchange of information with the EU member state of residence of the taxpayer. In December 2015 it was amended to introduce AEOI based on the CRS between San Marino and EU Member States with effect from tax year 2016.

195. Since the 2013 Report, San Marino signed the multilateral Convention on the Mutual Administrative Assistance in Tax Matters (MAAC) on 21 November 2013 and it has been in force from 1 December 2015. This instrument rectifies the problems of three out of the five (2) DTCs and (3) TIEAs identified as not meeting the standard in the 2013 Report and will rectify the issues with the fifth one once Vanuatu becomes a Party to it.

196. In addition, besides becoming a Party to the MAAC, San Marino has concluded a further 8 new EOI agreements (5 new TIEAs with Brazil, India, Indonesia, New Zealand and Switzerland and 3 new DTCs with Azerbaijan, Greece and Singapore).

197. To date, San Marino has EOI relationships to the standard with 118 jurisdictions and one not to the standard (Vanuatu).

198. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary. In addition, the foreseeable relevance of a group request should be sufficiently demonstrated, and the requested information would assist in determining compliance by the taxpayers in the group. San Marino has not received any group requests over the review period.

199. The table of determination and rating remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

Other forms of exchange of information

200. Besides exchanging information on request, the CLO is also involved in spontaneous exchange of information (in accordance with Article 1 of Law no. 106 of 22 July 2011 and Article 22 of Law no. 174/2015). San Marino was an Early Adopter concerning the application of the CRS 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). The CLO is also the competent authority for the exchange of information with the United States under its FATCA Agreement. San Marino is active in exchanging information through the V.I.E.S. and EU new computerised custom transit system with the EU Member States. Until 2016 San Marino also exchanged information based on the EU-San Marino Savings Agreement Directive (transposed by Law no. 81/2005).

C.1.1. Foreseeably relevant standard

201. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report found that San Marino's network of DTCs follow the OECD Model Tax Convention and are applied consistently with the Commentary on foreseeable relevance. Similarly, San Marino's TIEAs follow the 2002 Model Agreement on Exchange of Information on Tax Matters.

202. San Marino continues to interpret and apply its DTCs and TIEAs consistently with these principles. All of the new EOI arrangements which San Marino has signed since the 2013 Report included the term "foreseeably relevant" in their EOI Article, except for San Marino's treaty with Greece which contains alternative wording to the "foreseeably relevant" clause, in that they use the term "necessary" (as well as the pre-existing treaty with Qatar). San Marino's DTCs initially signed or amended after 2005 use the foreseeably relevant standard whilst older treaties use the words "as is necessary" in place of "as is foreseeably relevant". These terms are recognised in the commentary to Article 26 of the OECD Model DTC as allowing for the same scope of exchange. Further, both countries, as well as San Marino, are Parties to the MAAC which ensures that all of San Marino's EOI mechanisms with its partners are in line with the "foreseeable relevance" standard. Also, the mechanism with Qatar will be in line once the MAAC enters in to force for Qatar. It is also noted that San Marino's treaties with all 3 of its main EOI partners (Italy, France and Spain) use the term "foreseeably relevant" and there were no issues reported by the peers of San Marino with regard to interpretation of the "foreseeable relevance" standard.

203. The 2013 Report (see paras 296-299) noted that the agreement with Cyprus was not fully in line with the foreseeably relevant standard, whereas

those with Seychelles and Austria required additional details to be provided by them for San Marino to act upon their requests. However subsequent to the 2013 Report, Cyprus, Seychelles and Austria are now parties to the MAAC; these lacunae are now fully rectified.

204. San Marino requires that the requesting jurisdictions provide sufficient information to demonstrate the foreseeable relevance of their request. San Marino does not use a specific EOI request template to receive the requests from partners. However, when validating an exchange of information request received, the Director of the CLO evaluates whether such a request is foreseeably relevant and is not a "fishing expedition" in accordance with the requirements set out in the exchange of information agreement. The Director verifies whether the request meets the "foreseeable relevance" standard, which must be demonstrated by indicating:

- the identity of the person under examination or investigation
- a statement of the information sought including its nature and the form in which the requesting jurisdiction wishes to receive the information
- the tax purpose for which the information is sought
- grounds for believing that the information requested is held in the requested jurisdiction or is in the possession or control of a person within San Marino
- a statement that the request is in conformity with the law and administrative practices of the requesting jurisdiction, that if the requested information was within the requesting jurisdiction, then the competent authority of the requesting jurisdiction would be able to obtain the information under the laws of the requesting jurisdiction or in the normal course of administrative practice, and that the request is in conformity with the EOI agreement
- a statement that the requesting jurisdiction has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

205. The Director also verifies whether clarifications are needed from the requesting jurisdiction. Then the CLO sends an acknowledgement of receipt no later than within 15 days.

206. During the three-year period under review, only one request was declined because it did not meet the foreseeable relevance criteria. The requesting jurisdiction was contacted through an exchange of notes in an attempt to resolve this issue in collaboration with the partner, since taxpayers were not specifically identified and the period specified in the request was not covered by the MAAC. During the period under review, the CLO did

not make any requests for clarification to a requesting jurisdiction, except in one case where the request was not covered by the relevant double tax avoidance convention. San Marino collaborated with the requesting partner to try and resolve the case but ultimately the requesting partner chose not to send another properly formulated request.

Group requests

207. San Marino's procedures to deal with group requests are very similar to those used for dealing with an individual request and are detailed in San Marino's EOI Work Manual (see element C.5 for details). The main difference relates to the information that must be included in the request as per paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention, which includes the following information: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group.

208. During the review period, San Marino has not received any group requests. However, San Marino explained during the onsite visit that the CLO is fully ready to handle any such requests in the future according to international standards.

C.1.2. Provide for exchange of information in respect of all persons

209. The 2013 Report found that none of San Marino's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. No issues arose in the period 2014 to 2016 in this regard.

210. The additional agreements that San Marino has entered into since the 2013 Report similarly do not have such restrictions. Peers have not raised any issues in practice during the current review period.

C.1.3. Obligation to exchange all types of information

211. The 2013 Report did not identify any major issues with San Marino's network of agreements in terms of ensuring that all types of information could be exchanged and no issues arose in practice, except that the 2013 report noted that San Marino's tax treaty with Cyprus does not contain wording similar to Article 26(5) of the OECD Model Tax Convention. However, since 01-04-2015 MAAC is in force in Cyprus, thus addressing this issue.

212. The additional agreements that San Marino has entered into since the 2013 Report all include paragraph 5 of the Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. San Marino has provided data that in at least one case, information had to be obtained from a professional and in 30 cases, information was obtained from banks. Peers have not raised any issues in practice during the current review period.

C.1.4. Absence of domestic tax interest

213. The 2013 Report did not identify any issues with San Marino's network of agreements regarding a domestic tax interest and no issues arose in practice, except for Vanuatu which has limitations in respect of accessing information for exchange purposes. This would be resolved once Vanuatu becomes a party to the MAAC.

214. The additional agreements that San Marino has entered into since the 2013 Report all include paragraph 4 of the Article 26 of the OECD Model Tax Convention which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. Peers have not raised any issues in practice during the current review period from 2014 to 2016. San Marino reported that there were some cases where the requested information concerned a person who was not a taxpayer of San Marino and there was no domestic tax interest in obtaining such information. There were 4 such cases in 2014, 8 cases in 2015 and 13 cases in 2016, where the requests sought banking information that the CLO provided to the satisfaction of peers.

C.1.5. Absence of dual criminality principles

215. The 2013 Report did not identify any issues with San Marino's network of agreements in respect of dual criminality and no issues arose in practice.

216. The additional agreements that San Marino has entered into since then do not include dual criminality provisions. Peers have not raised any issues in practice.

C.1.6. Exchange information relating to both civil and criminal tax matters

217. The 2013 Report found that San Marino's network of agreements provided for exchange in both civil and criminal matters. The additional agreements that San Marino has entered into since then provide for exchange

of information in both civil and criminal tax matters. No issues arose in practice in the current review period.

C.1.7. Provide information in specific form requested

218. The 2013 Report noted that the CLO applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under San Marino's law or administrative practice. If the requesting party needs original documents or certified copies, the CLO requests them from the Tax Office in writing. The documents/certificates are then transmitted with a return note within a reasonable time limit (on average five working days). There were no requests to provide information in any specified format in the current review period and no issues have arisen in this regard.

C.1.8. Signed agreements should be in force

219. The 2013 Report noted that San Marino had signed 44 EOI agreements, comprising 18 DTCs and 26 TIEAs, among which 32 were in force. Since then all those pending 12 agreements have come into force and San Marino has signed and ratified 3 new DTCs (Azerbaijan, Greece, Singapore) and 5 new TIEAs (Brazil, India, Indonesia, New Zealand and Switzerland). San Marino has now a total of 21 DTCs and 31 TIEAs out of which only 2 TIEAs are not in force (Brazil and Indonesia)

EOI bilateral mechanisms

		Total	Total bilateral instruments not complemented by the MAC
A	Total Number of DTCs/TIEAS (A = B + C)	52	2 (Vanuatu, Viet Nam)
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B = D + E)	2 (Brazil and Indonesia)	0
C	Number of DTCs/TIEAs signed and in force (C = F + G)	50	2
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	2 (Brazil and Indonesia)	0
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	0	0
F	Number of DTCs/TIEAs in force and to the Standard	50	1 (Viet Nam)
G	Number of DTCs/TIEAs in force and not to the Standard	2 (Cyprus and Vanuatu)	1 (Vanuatu)

220. Since the 2013 Report, San Marino has ratified the MAAC and it is in force for San Marino since 1 December 2015. The MAAC has 117 participants, including San Marino. San Marino's network of bilateral EOI mechanisms includes agreements with 2 jurisdictions (Vanuatu and Viet Nam) that are not Party to the MAAC, bringing San Marino's total network of EOI partners to 118.

221. While all the 21 DTAAs are in force, out of the 31 TIEAs only 29 are in force. The TIEAs with Brazil and Indonesia are yet to come into force (given the counterparts' internal procedures) but have been ratified by San Marino. However, as noted by the 2013 Report (see paras 309-310) the DTAA with Cyprus was not in line with the international standards (language in the DTAA with Cyprus was not in line with Article 26(5) of Model Convention posing restrictions in terms of bank secrecy).The protocol amending this DTAA signed with Cyprus in May 2017 to bring this in line with international standards is yet to be ratified by San Marino. San Marino reported that the ratification process is currently underway as at May 2018.

C.1.9. Be given effect through domestic law

222. San Marino has in place the legal and regulatory framework to give effect to its EOI mechanisms. San Marino's authorities have advised that after ratification by the Parliament and the issuance of a ratification decree by the Captains Regent, DTCs and TIEAs acquire the status as domestic law but, as international treaties, come first in the hierarchy of legal norms. No issues were raised in the 2013 Report in this regard, and similarly no issues arose in practice since then.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

223. San Marino's network of DTCs and TIEAs cover jurisdictions across Europe, Asia, the Americas and financial centres in the Caribbean and Pacific Islands. San Marino had an EOI relationship with 44 partners by virtue of 18 DTAAs and 26 TIEAs. The 2013 Report found that element C.2 was "in place" and rated Compliant.

224. San Marino committed to expand its network with all relevant partners and since then its network increased from 44 to 118 partners, mainly with the signature and entry into force of the MAAC.

225. Since the 2013 Report, San Marino's EOI network has also expanded with 3 new DTCs (Azerbaijan, Greece and Singapore), 3 amending protocols

(Croatia, Cyprus and Seychelles) and 5 TIEAs (Brazil, India, Indonesia, New Zealand and Switzerland) concluded. San Marino reports that negotiations with four other jurisdictions are underway. No member of the Global Forum has indicated that it had approached San Marino with a view to negotiating an EOI instrument and received no answer or a negative answer.

226. Comments were sought from the jurisdictions participating in the Global Forum but no information has been received which would suggest that San Marino has not entered into an agreement with any jurisdiction when it was requested to do so.

227. The recommendation for San Marino to continue to develop its EOI network with all relevant partners is therefore removed from the table, although San Marino should continue to conclude EOI agreements with any new relevant partners who would so require.

228. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

229. The 2013 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in San Marino regarding confidentiality were in accordance with the standard. No issues in practice were found in the review period 2014 to 2016.

230. Since the 2013 Report, on 13 October 2016 the CLO obtained the ISO 27001:2013 certification for its information security practices which indicates further strengthening of San Marino's confidentiality infrastructure during the review period.

231. The table of determination and rating remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.3.1. Information received: disclosure, use and safeguards

232. The 2013 Report concluded that all the agreements entered into by San Marino meet the confidentiality standard (see 2013 Report paras 343 to 346). The new treaties entered into by San Marino during the current review period also include the restrictions on the disclosure of the information received and use thereof by a Contracting Party to comply with the requirements of the international standard. The agreements provide that any information received by a Contracting Party under the Agreement must be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party.

233. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model

Tax Convention introducing this element, which previously appeared in the commentary to this Article. In the period under review San Marino reported that there were no cases where the requesting partner sought San Marino's consent to utilise the information for non-tax purposes for EOI agreements that provide for such an exception.

C.3.2. Confidentiality of other information

234. The 2013 Report noted that the confidentiality provisions in San Marino's agreements used the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA and did not draw a distinction between information received in response to requests and information forming part of the requests themselves. The position remains the same for all the new agreements entered into by San Marino since then.

235. There are no notification requirements in San Marino and the information holder is not informed of the requesting jurisdiction or the name of the taxpayer, unless required in view of the nature of the information to be obtained from the information holder (for e.g. providing the name of the account holder to a Bank).

Confidentiality in practice

236. The 2013 Report did not raise any issue with regard to the confidentiality procedures of San Marino to deal with information in respect of a request from a treaty partner in practice (see 2013 Report, paras 347 to 349). It also noted that all public officials are also bound by secrecy obligations in respect of information to be provided to a treaty partner. During the current review period, the same procedures and legal provisions continue to operate. During the current review period, San Marino did not report any breaches with regard to confidentiality and there were no adverse peer inputs in this regard. It is noteworthy that San Marino received ISO 27001:2013 certification for its information security practices which indicates further strengthening of San Marino's confidentiality practices during the review period. The onsite visit also confirmed confidentiality in practice by San Marino to be in line with international standards, wherein it was evident that there was restricted access to CLO and EOI files in San Marino.

237. As a part of the onsite interviews, the CLO also clarified that there are no rights under the freedom of information laws to see EOI related files and the taxpayer has no rights to see his/her EOI file at any stage. Further, there are clear prohibitions for the third party to not disclose the receipt of a notice received in respect of an EOI request or the contents thereof to the taxpayer concerned (Art. 18 Law 174/15 paragraph 2, letter a,3).

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

C.4.1. Exceptions to requirement to provide information

238. The 2013 Report concluded that San Marino's information exchange mechanisms allow the Parties to decline to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). The new EOI mechanisms entered into by San Marino contain the same provisions. In practice, during the current review period, the Sammarinese authorities confirmed that they did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards.

239. The table of determination and rating therefore remains as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

240. In order for exchange of information to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

241. The 2013 Report concluded that San Marino had an effective system for exchanging information and element C.5 was rated Largely Compliant. The CLO is responsible for the exchange of information under all of San Marino's EOI mechanisms. During the current review period, the day-to-day operation was handled by an experienced and competent staff of 4 officers and the system for handling requests was efficient and well-organised. Peer input provided by 2 out of the 3 of San Marino's exchange of information partners reflected that they had a good relationship with San Marino's CLO staff and were satisfied with the quality of the responses provided. Overall, response times were satisfactory. A majority of the requests received in the current review period pertained to a bulk request regarding tax residence information relating to individuals. Final answers were provided within 90 days in more than 80% of requests and interim responses and updates were also provided. However, San Marino should ensure that it systematically provides an update or status report to its EOI partners within 90 days when unable to provide a substantive response within that time in all cases.

242. The 2013 Report made a recommendation for San Marino to monitor its resources and procedures so that its competent authority continues to provide complete and quality information to its partners in time. San Marino has addressed the recommendation made in the 2013 Report by demonstrating timely exchanges of information (97.7% responses within 90 days and 100% under 180 days) with a good quality of the responses to the satisfaction of its peers. Accordingly, this recommendation is removed.

243. In all other respects San Marino continues to perform to the standard in terms of responding to requests, which totalled 361 (based on the number

of request letters) during the period under review. The organisation and procedures are complete and coherent. Similarly, San Marino's system for sending requests is well developed and peers raised no issues with the quality of these requests.

244. The updated table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

C.5.1. Timeliness of responses to requests for information

245. Over the period under review (1 January 2014 to 31 December 2016), San Marino received 361 requests for information (based on the request letters received). The information requested in these requests[4] related to (i) ownership information (15 for legal ownership and 8 for beneficial ownership), (ii) accounting information (39 cases), (iii) banking information (30 cases) and (iv) other type of information (321 cases in respect of the tax residence of individuals). The entities for which information was requested[5] is broken down to (i) companies (30 cases), (ii) individuals (361 cases), (iii) bearer shares (0 cases), (iv) trusts, foundations and other entities (0 cases). San Marino had three EOI partners for the period under review, Italy, France and Spain and the most significant EOI partner (by virtue of the number of exchanges with them) was Italy. For these years, the number of requests where San Marino answered within 90 days, 180 days, one year or more than one year, are tabulated below (reported by San Marino in terms of the request letters involved). In the review period the average time for processing identity/ownership information (for example in the cases regarding tax residence) as well as that for accounting and banking information was about 90 days.

4. Please note that some requests entailed more than one information category.
5. Please note that some requests entailed more than one entity type.

Statistics on response times

		2014		2015		2016		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	3	0.83	9	2.49	349	96.68	361	100
Full response: = 90 days		3	100	7	77.8	343	98.2	353	97.7
= 180 days (cumulative)		3	100	9	100	349	100	361	100
= 1 year (cumulative)	[A]	-	-	-	-	-	-	-	-
> 1 year	[B]	-	-	-	-	-	-	-	-
Declined for valid reasons		-	-	-	-	1	100	1	100
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		-	-	0 out of 2 cases responded in 100 days		0 out of 6 cases responded in 100 days		0 out of 8 cases responded in 100 days	
Requests withdrawn by requesting jurisdiction	[C]	-	-	-	-	1		1	0.003
Failure to obtain and provide information requested	[D]	-	-	-	-	-	-	-	-
Requests still pending at date of review	[E]	-	-	-	-	-	-	-	-

Notes: San Marino counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, San Marino counts that as 1 request. If San Marino receives a further request for information that relates to a previous request, with the original request still active, San Marino will append the additional request to the original and continue to count it as the same request.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued

246. San Marino explained that requests that are not fully dealt with within the 90 days typically relate to complex queries covering a variety of types of information. Peers were in general satisfied with the timeliness of responses by San Marino. As may be noted from the aforementioned table, San Marino declined to answer one request where taxpayers were not specifically identified and the period specified in the request was not covered by the Multilateral Convention (MAAC).

Internal process for status updates

247. San Marino has reported that if it is unable to provide the requested information within 90 days, the CLO endeavours to send to the requesting jurisdiction, if possible, a significant part of the information, also providing an update on the status of the request, within 90 days.

248. While peers indicated having not received status updates, in practice, as also noted by one peer, the answers provided in more than 90 days were received in any case around 100 days after the request, therefore, a status update was unnecessary. However, San Marino should systematically provide

an update or status report to its EOI partners within 90 days when unable to provide a substantive response within that time.

C.5.2. Organisational processes and resources

249. In San Marino, the exchange of information function is centralised in a single unit called the Central Liaison Office (CLO), created pursuant to a 2008 law. It reports to the Congress of State (Council of Ministers) and to the Parliament. The CLO is an autonomous body (not a part of the Tax Office) which functions as San Marino's competent authority for all international agreements on exchange of information adopted by the Republic of San Marino.

250. The responsibilities of the CLO extend to San Marino's network of TIEAs and DTCs, the MAAC, as well as exchange of VAT-related information under administrative agreement with Italy. The Competent Authorities in the CLO, authorised by Great and General Council by means of a *note verbale*, introduced itself to partner jurisdictions with which tax agreements were in force. In addition, the CLO unit dedicated to the exchange of information is indicated on the secure website of the Competent Authorities (Global Forum). The CLO's contact details can also be found on the website of the Ministry of Finance and Budget of the Republic of San Marino.

251. The CLO comprises a Director, an Officer-Deputy Director; an Organisational Unit Manager; two Experts and an Operator working full time on exchange of information on request and automatic exchange of information. The current staffing is an increase from the previous review period of two individuals in view of the increased EOI workload. The CLO may collect information directly or may request the collaboration of other authorities to carry out its functions. In practice, the CLO often relies on other authorities like the Tax Office, CBSM, FIA, OCSEA (based on Memoranda of Understanding) to obtain information, both to ensure an in-depth examination of the information to be exchanged with the partners, as well as to obtain the information sought by the peers. The CLO's staff speaks and understands English, French, Italian and Spanish.

252. The CLO staff has received training at various levels, including conferences and seminars concerning exchange of information, international taxation, tax transparency and transfer pricing. At an international level, the staff has participated in OECD and Global Forum training seminars on the exchange of information for tax purposes and has a good knowledge of EOI procedures. The information exchange unit (the CLO, together with the IT, Technology, Data and Statistics Office) has obtained the ISO 27001 Certification. The CLO staff participated in training courses to obtain the aforementioned certification. It is also noted that San Marino has a well-documented manual that provides for due procedures to be followed to deal with both the incoming as well as outgoing requests.

Incoming requests

253. Incoming requests are assigned a reference number of the CLO. Subsequently, a specific file is created, data are entered in the database and the relevant paper dossier is created. The CLO uses a dedicated software to plan the various steps for processing requests to ensure ongoing and complete monitoring.

254. When the CLO receives a request for information, it verifies the identity of the sending competent authority and whether an EOI agreement is in place with that authority. The request is first validated by the Director, on the basis of the provisions of international agreements with relevant jurisdictions. The Director verifies whether the request meets the "foreseeable relevance" standard (see C.1.1).

Procedure for obtaining requested information which are in the hands of the tax authorities

255. For its internal purposes and in the fulfilment of its tasks, the CLO may request the collaboration of the Tax Office although it has the power to directly access the database of the Tax Office. In the review period, San Marino has reported that in 11 cases the Tax Office has been asked to provide the requisite information for responding to partners. At the onsite visit, the Sammarinese authorities explained that usually there is a handwritten notice in which the information and the deadline are specified, although there is also an internal electronic mail system that is confidential for exchange of information. This is in line with the Article 6 of the Memorandum between CLO and Tax Office which reads "Each request for information and co-operation between the Authorities shall be made in writing with acknowledgement of receipt, without prejudice to the provisions of the preceding Article. In urgent cases, the request may also be processed by e-mail". It was further explained that the vast majority of requests for information are sent formally. In most cases over the review period, the information was available in the taxpayer database.

Verification of the information gathered

256. As noted by the 2013 Report (see para. 376), tax documents obtained from an operator/individual (or from a person maintaining such documents, such as a professional) may be submitted to the Tax Office for verification purposes, in conformity with Article 11 of Decree Law no. 36/2011 and Article 5 of Law no. 95/2008.

257. Moreover, under Article 17 of Law no. 95/2008, as amended by Decree Law no. 36/2011 (starting from 1 January 2016 pursuant to paragraph 2

of Article 12 of Law no. 174/2015), the CLO and, respectively, the Supervision Committee of the Central Bank and the Financial Intelligence Agency have concluded agreements aimed at regulating co-operation and the forms of mutual collaboration and understanding. These memoranda include procedures to verify the acquired documentation from economic operators. The submitted documents are also compared with those contained in the databases used by the public authority to which the CLO has access. In the review period, wherever appropriate, San Marino adopted this procedure for verification before sending the responses to peers.

Practical difficulties San Marino experienced in obtaining requested information

258. San Marino informed that they have not faced any significant difficulty in responding to any particular type of request or with respect to requests from any particular partner. It is noteworthy that San Marino handled 361 requests in the review period, with over 96% of them being responded within 90 days.

Outgoing requests

259. There were no outgoing requests by San Marino in the previous review period, as noted by the 2013 Report. In the current review period, although San Marino has responded to the questionnaire that it sent 138 requests, at the onsite it was clarified that these requests were not in relation to direct taxes but to VAT. However, in terms of organisational setup and readiness to deal with the outgoing requests, as the centralised unit designated as the competent authority to implement and pursue administrative co-operation and exchange of information in tax matters, in accordance with international agreements, the CLO sends EOI requests to the interested jurisdictions. Upon receiving a report from a domestic authority, the CLO sends a request to its partner competent authority specifying:

- the identity of the person under examination or investigation
- a statement of the information sought including its nature and the form in which it wishes to receive the information
- the tax purpose for which the information is sought
- grounds for believing that the information requested is held in the requested jurisdiction or is in the possession or control of a person within the requested jurisdiction
- a statement that the request is in conformity with the law and administrative practices of the requesting jurisdiction, that if the requested

information was within the requesting jurisdiction then the competent authority of the requesting jurisdiction would be able to obtain the information under the laws of the requesting jurisdiction or in the normal course of administrative practice, and that the request is in conformity with the EOI agreement

- a statement that the CLO has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

260. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI by San Marino.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- Element A.1: San Marino is recommended to ensure that there is adequate supervision on all companies, such that accurate legal ownership information is available in all cases.
- Element A.1: San Marino is recommended to monitor the implementation of new requirements under the amended AML Law, in respect of all foreign companies.
- Element A.1: In respect of Notaries who play a significant role in San Marino with regard to CDD and availability of legal and beneficial ownership information, San Marino reported that out of about 120 notaries/lawyers, 7 were subject to on-site inspections in the review period. In view of the limited number of onsite visits, San Marino is recommended to ensure adequate coverage of notaries in oversight by FIA, particularly in view of the new AML requirements to maintain beneficial ownership information as per standards.
- Element A.1: San Marino is recommended to ensure adequate oversight of non-professional trustees in respect of availability of beneficial ownership information as per the recently amended AML Law.
- Element A.2: San Marino should continue to monitor the application of the enforcement measures so as to ensure the availability of accounting information consistent with the standard.

- Element A.2: San Marino should continue to ensure that the allowance for simplified accounting records does not in any way interfere with the effective exchange of information in tax matters.
- Element A.3: San Marino is recommended to monitor the implementation of the new legal provisions and to ensure that accurate beneficial ownership information is available with all Banks in all cases as per international standards.
- Element C.2: San Marino should continue to conclude EOI agreements with any new relevant partner who would so require.
- Element C.5: San Marino should ensure that it systematically provides an update or status report to its EOI partners within 90 days when unable to provide a substantive response within that time in all cases.

Annex 2: List of San Marino's EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Andorra	TIEA	21.09.2009	07.12.2010
2	Argentina	TIEA	07.12.2009	16.06.2012
3	Austria	Double tax agreement (DTA)	24.11.2004	01.12.2005
		Amending Protocol to DTA	18.09.2009	01.06.2010
		Agreement through Exchange of Notes to replace paragraph 1 subparagraph e) of Article 1 of the Additional Protocol to the Amending Protocol to DTA	16.11.2012 and 27.11.2012	01.09.2013
4	Australia	TIEA	04.03.2010	11.01.2011
5	Azerbaijan	DTA	08.09.2015	02.05.2016
6	Bahamas	TIEA	24.09.2009	10.11.2011
7	Barbados	DTA	14.12.2012	06.08.2013
8	Belgium	DTA	14.12.2012	06.08.2013
		Amending Protocol to DTA	14.07.2009	18.07.2013
9	Brazil	TIEA	31.03.2016	Not in Force
10	Canada	TIEA	27.10.2010	20.10.2011
11	China (People's Republic of)	TIEA	09.07.2012	30.04.2013

	EOI partner	Type of agreement	Signature	Entry into force
12	Croatia	DTA	18.10.2004	05.12.2005
		Amending Protocol to DTA	01.08.2012	21.05.2014
13	Cyprus[a]	DTA	27.04.2007	18.07.2007
		Amending Protocol to DTA	19.05.2017	
14	Czech Republic	TIEA	25.11.2011	06.09.2012
15	Denmark	TIEA	12.01.2010	19.05.2010
16	Faroe Islands	TIEA	10. 09.2009	03.06.2011
17	Finland	TIEA	12.01.2010	15.05.2010
18	France	TIEA	22.09.2009	02.09.2010
19	Georgia	DTA	28.09.2012	12.04.2013
20	Germany	TIEA	21.06.2010	21.12.2011
21	Greece	DTA	26.06.2013	07.04.2014
22	Greenland	TIEA	22.09.2009	07.12.2012
23	Guernsey	TIEA	29.09.2010	16.03.2011
24	Hungary	DTA	15.09.2009	03.12.2010
25	Iceland	TIEA	12.01.2010	03.11.2012
26	India	TIEA	19.12.2013	29.08.2014
27	Indonesia	TIEA	25.09.2013	Not in Force
28	Ireland	TIEA	04.07.2012	12.05.2013
29	Italy	DTA	21.03.2002	03.10.2013
		Amending Protocol to DTA	13.06.2012	03.10.2013
30	Liechtenstein	DTA	23.09.2009	19.01.2011
31	Luxembourg	DTA	27.03.2006	29.12.2006
		Amending Protocol to DTA	18.09.2009	05.08.2011
32	Malaysia	DTA	19.11.2009	28.12.2010
33	Malta	DTA	03.05.2005	19.07.2005
		Amending Protocol to DTA	10.09.2009	15.02.2010
34	Monaco	TIEA	29.07.2009	10.05.2010
35	Netherlands	TIEA	27.01.2010	01.01.2011
36	New Zealand	TIEA	01.04.2016	08.09.2017

	EOI partner	Type of agreement	Signature	Entry into force
37	Norway	TIEA	12.01.2010	22.07.2010
38	Poland	TIEA	31.03.2012	28.02.2013
39	Portugal	DTA	18.11.2010	03.12.2015
40	Qatar	DTA	17.03.2013	30.10.2013
41	Romania	DTA	23.05.2007	11.02.2008
		Amending Protocol to DTA	27.07.2010	16.06.2011
42	Saint Kitts and Nevis	DTA	20.04.2010	12.02.2014
43	Samoa	TIEA	01.09.2009	21.03.2012
44	Seychelles	DTA	28.09.2012	30.05.2013
		Agreement through Exchange of Notes Amending Protocol to DTA	30.05.2014 and 11.06.2014	19.05.2015
45	Singapore	DTA	11.12.2013	18.12.2015
46	South Africa	TIEA	10.03.2011	28.01.2012
47	Spain	TIEA	06.09.2010	02.08.2011
48	Sweden	TIEA	12.01.2010	01.07.2010
49	Switzerland	TIEA	16.05.2014	20.07.2015
50	United Kingdom	TIEA	16.02.2010	27.07.2011
51	Vanuatu	TIEA	19.05.2011	08.07.2017
52	Viet Nam	DTA	14.02.2013	13.01.2016

Note: a. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

2. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention). The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Multilateral Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Multilateral Convention was opened for signature on 1 June 2011.

San Marino signed the Multilateral Convention on 21 November 2013. It deposited its instrument of ratification on 28 August 2015 and the Convention entered into force for San Marino on 1 December 2015.

Currently, the amended Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force:[6] Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018), Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May; entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay, Peru (entry into force on 1 September 2018), Philippines, Qatar, Turkey (entry into force on 1 July 2018), the United Arab Emirates (entry into force on 1 September 2018) and the United States (the original 1988 Convention is in force since 1 April 1995 and the amending Protocol signed on 27 April 2010).

3. EU Directive on Mutual Administrative Assistance in Tax Matters

San Marino is active in exchanging information through the V.I.E.S. and NCTS systems. Until 2016 San Marino exchanged information based on the EU-San Marino Savings Agreement Directive (transposed by Law no. 81/2005).

6. Note that while the last date on which the changes to the legal and regulatory framework can be considered was 27 April 2018, changes to the treaty network that occur after that date are reflected in this Annex.

Annex 3: Methodology for the Review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at [cut-off date for 2018 Report], San Marino's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2014 to 31 December 2016, San Marino's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by San Marino's authorities during the onsite visit that took place from 21-23 November 2017 in San Marino.

List of laws, regulations and other materials received

AML framework

Law no. 92 of 17 June 2008 as subsequently amended, and integrations introduced by the following regulatory provisions: Law no. 73 of 2009, Decree Law no. 134 of 2010, Decree Law no. 187 of 2010, Decree Law no. 98 of 2013, Decree Law no. 176 of 2013, Delegated Decree no. 77 of 2014, Law no. 146 of 2014, Delegated Decree no. 178 of 2014, Decree Law no. 83 of 2015 and Decree Law no. 197 of 2015.

Delegated Decrees, in particular Decrees nos. 136/2008, 137/2008, 138/2008 and 146/2008,

Authorities interviewed during on-site visit

Officials from the Ministry of Finance and Budget

Officials from the Ministry of Foreign Affairs

Officials from the Ministry of Industry, Handicraft and Trade

Officials of the Central Liaison Office (CLO)

Officials from the Central Bank of San Marino (CBSM)

Officials from the Financial Intelligence Agency (FIA)

Officials from the Court Registry

Officials from the Tax Office

Officials from the Office for Control and Supervision of Economic Activities (OCSEA)

Representatives of the Association of Lawyers and Notaries and Accountants Association

Representatives of the Bankers Association

Current and previous reviews

This report is the fourth review of San Marino conducted by the Global Forum. San Marino previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2010 and a supplementary review (Phase 1) in 2011 and the implementation of that framework in practice (Phase 2) in 2013. The 2013 Report containing the conclusions of the first review was first published in November 2013 (reflecting the legal and regulatory framework in place as of May 2013).

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of Reviews

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
Round 1 Phase 1	Ms Caroline Peffer, Ministry of Finance, Luxembourg, Ms Monica Sionara Schpallir Calijuri, from the Secretariat of the Federal Revenue of Brazil, and Mr Sanjeev Sharma from the Global Forum Secretariat	n.a.	October 2010	January 2011
Round 1 Supplementary to Phase 1		n.a.	August 2011	October 2011
Round 1 Phase 2	Ms Caroline Peffer, Ministry of Finance, Luxembourg, Ms Monica Sionara Schpallir Calijuri, from the Secretariat of the Federal Revenue of Brazil; Mr Francesco Positano and Mr Sanjeev Sharma from the Global Forum Secretariat	1 January 2009 to 31 December 2011	May 2013	July 2017
Round 2	Ms Jolanda Roelofs, Ministry of Finance, Netherlands; Ms Niamh Moylan, Director – International Taxation, Jersey; Mr Bhaskar Eranki and Ms Mary O'Leary from the Global Forum Secretariat	1 January 2014 to 31 December 2016	April 2018	13 July 2018

Annex 4: Jurisdiction's response to the review report[7]

San Marino would like to thank the evaluation team and the Secretariat for the quality of this very comprehensive report and agrees with all of the ratings and recommendations, both in-box and in-text recommendations, proposed by the evaluation team and endorsed by the members of the Peer Review Group.

San Marino is determined to continue to evidence its commitment to all the current international initiatives on transparency. Indeed San Marino is also involved in other transparency processes that confirm our willingness to be cooperative; one for all, San Marino is an Early Adopter since 2017 in the Automatic Exchange of Information.

Concerning the A.1 in-box recommendation San Marino has already transposed the 4th EU AML Directive in its domestic law and is now implementing the regulatory AML/CFT framework: Instructions for FIs in relation to CDD requirements and risk based approach, including BO information, have been already issued.

San Marino is an active member of MONEYAL Committee of the Council of Europe, monitoring body in charge of implementing FATF Standards in the European region. San Marino has successfully undertaken the fourth round of assessment based on these standards and is committed to adopting and implementing the FATF Recommendations.

Concerning the in-text recommendations San Marino is committed to taking every measure that can guarantee the pursuit of the suggested indications.

7. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request SAN MARINO 2018 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, please visit ***www.oecd.org/tax/transparency***.

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Consult this publication on line at ***https://doi.org/10.1787/9789264302839-en***.

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