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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

Corruption prevention in respect of  
members of parliament, judges and prosecutors

### COMPLIANCE REPORT

### SAN MARINO

Adopted by GRECO at its 91<sup>st</sup> Plenary Meeting  
(Strasbourg, 13-17 June 2022)

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## **I. INTRODUCTION**

1. This compliance report assesses the measures taken by the authorities of San Marino to implement the recommendations in the Fourth Round Evaluation Report on San Marino, which was adopted at GRECO's 85th plenary meeting (25 September 2020) and made public on 29 September 2020, following authorisation by San Marino ([GrecoEval4Rep\(2019\)1](#)). GRECO's fourth evaluation round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of San Marino submitted a Situation Report on measures taken to implement GRECO's recommendations. This report was received on 28 March 2022 and, together with information supplied subsequently, served as the basis for the Compliance Report.
3. GRECO selected Montenegro (with respect to parliamentary assemblies) and Switzerland (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Mr Dušan DRAKIC, on behalf of Montenegro, and Mr Olivier GONIN, on behalf of Switzerland. They were assisted by the GRECO's secretariat in drawing up this Compliance Report.
4. The Compliance Report considers the response to each recommendation in the Evaluation Report and offers an overall assessment of the country's level of compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after adoption of this Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 14 recommendations to San Marino in the Evaluation Report. Compliance with these recommendations is considered below.

### *Corruption prevention in respect of members of parliament*

6. At the start, the authorities highlight the legislative and administrative efforts undertaken to address GRECO recommendations, which demanded building consensus among political actors in the country. A description of the outputs achieved, for each of the professional groups of this report, and the broad support gathered is described below.

#### **Recommendation i.**

7. *GRECO recommended considering further restricting the exceptions to public voting.*
8. The authorities of San Marino report that the Institutional Secretariat<sup>1</sup> carried out a survey which substantiated that, since July 2019 until present, the Great and General Council has never resorted, not even in the case of topics of high ethical content, to the possibility provided by Law No. 3/2019 of secret ballot<sup>2</sup>. Regarding personal

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<sup>1</sup> The Institutional Secretariat is an administrative office which is part of public administration and provides administrative support to San Marino's constitutional organs, namely, the Captains Regent, the Great and General Council (Parliament), the respective parliamentary commissions and the Constitutional Court.

<sup>2</sup> Qualified Law No. 3/2018, Regulation of the Great and General Council, entered into force in July 2019 (pursuant to the transitional rule referred in its Article 104). Article 53, of Law No. 3/2018, provides for secret ballot when voting personal appointments. It also establishes that draft laws relating to matters of high ethical content (e.g. abortion, end of life care) and concerning fundamental human rights, as well as acts relating to specific persons could be excluded from an open vote by a two-thirds majority vote of the Bureau of the Great and General Council.

appointments, if no councillor objects, Captains Regent, by established custom, proceed with an open vote. From 2019 to date, only 20 nomination votes (out of a total of 295) have been made per ballot, six of which concerned the election of the Captains Regent (which by Constitutional law must take place by ballot). On the basis of the practice gathered by the Institutional Secretariat, the heads of the respective parliamentary groups considered the case insufficient to amend current legislation.

9. GRECO takes note of the update provided which sheds further light on the use of secret voting in San Marino. It is recalled that the Fourth Round Evaluation Report recognised the good level of transparency of legislative work in San Marino, but expressed reservation about the possibility provided by law to resort to secret voting in some circumstances (i.e. personal appointments and laws of high ethical content). GRECO notes that the matter has been considered by the authorities, as recommended, and, in the light of existing practice (open voting being the main rule and secret ballot strictly restricted not only by law but also in its actual application), they have determined that there is no real need to amend legislation.
10. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

#### **Recommendation ii.**

11. *GRECO recommended that a code of conduct, accompanied by explanatory comments and/or concrete examples (including provisions and guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties and lobbyists, preservation of reputation, as well as limitations on certain activities), be adopted for the members of the Great and General Council and that it be brought to the knowledge of the public.*
12. The authorities of San Marino report that, on 21 March 2022, the Bureau of the Great and General Council approved by unanimous vote the Code of Conduct for Members of the Great and General Council, which was subsequently adopted by the Great and General Council with another unanimous vote (Decision No. 29/2022). It will enter into force on 1 July 2022. An Annex to the Code provides explanatory comments and concrete examples on its provisions. Moreover, the Code foresees the establishment of an Advisory Committee, which is to provide opinions on (potential) conflicts of interest and issue further guidelines on the interpretation and implementation of the provisions of the Code (see also under recommendation vi below). The authorities further submit that the Code of Conduct has been widely advertised in the media<sup>3</sup> and has been published in the Official Bulletin<sup>4</sup> of the Republic of San Marino.
13. GRECO welcomes the recent adoption of the Code of Conduct in respect of members of the Great and General Council, which deals with general ethical principles, conflict of interests, gifts or similar benefits and the misuse of public information and resources (the provisions relating to declarations by members of the Great and General Council will be examined below). The content of the Code has clear links to all recommendations addressed by GRECO to San Marino in respect of parliamentarians and its provisions are reasonably expansive as they address conduct matters. In addition, the Code of Conduct was brought to the knowledge of the public through its publication in the media and the Official Bulletin of San Marino. As per its established jurisprudence, GRECO stresses the importance of the Code as a living document. Therefore, as experience with its implementation evolves, it may require further adjustment in emerging/challenging areas (as for example, lobbying – an

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<sup>3</sup> See for example, <https://www.sanmarinortv.sm/news/politica-c2/codice-di-condotta-per-i-consiglieri-ecco-le-principali-indicazioni-a220622>.

<sup>4</sup> <https://www.bollettinoufficiale.sm/on-line/home.html>.

issue which was not found to be a matter of concern in the evaluation visit, but where GRECO still encouraged the authorities to remain vigilant).

14. Regarding the explanatory comments and/or concrete examples which are to accompany the Code, as per recommendation ii, an Annex to the Code provides further guidance regarding conflicts of interest. GRECO understands that the Advisory Committee will further develop guidance once it starts to operate and in the light of its experience. More particularly, it is foreseen that it issues a publication containing guidelines, indicative criteria, and general ethical principles for parliamentarians, which are to be distributed to each individual member and also be made available for the general public (see also under recommendation vi). This is thus work lying ahead for full implementation of recommendation ii.
15. GRECO concludes that recommendation ii has been partly implemented.

#### **Recommendation iii.**

16. *GRECO recommended introducing clear written rules, guidance and support mechanisms for ad-hoc disclosure when a conflict may emerge between the specific private interests of a member of parliament and a matter under consideration in parliamentary proceedings (in plenary and committee work).*
17. The authorities of San Marino state that Article 3 (paragraph 6) of the Code of Ethics requires a member of the Great and General Council to notify immediately any actual or potential conflict of interest in relation to a matter in question before speaking or voting in the Great and General Council or in one of its bodies or before being appointed to another office or mandate. The explanatory notes, contained in the Annex to the Code, further expand on the matter, including by providing with concrete examples on conflicts of interest. It is also expected that as the Advisory Committee performs its guidance role, it will further add to this area. In this connection, the Code establishes that, if a conflict of interest arises during a meeting, the Advisory Committee is expected to deliver an opinion before the discussion or taking a vote.
18. GRECO welcomes that the Code of Ethics includes a requirement for parliamentarians to disclose actual or potential conflicts of interest before taking part in a decision-making process. In this respect, it notes that guidance and support will be provided by the Advisory Committee. These measures are in line with the recommendation.
19. GRECO concludes that recommendation iii has been implemented satisfactorily.

#### **Recommendation iv.**

20. *GRECO recommended (i) that a system for the public declaration of parliamentarians' assets, income, liabilities and interests be introduced and (ii) that consideration be given to including information on spouses and dependant family members (it being understood that such information would not necessarily need to be made public).*
21. As regards part (i), the authorities of San Marino refer to Article 4 of the Code of Conduct, according to which members of the Great and General Council are required to consent to the annual transmission to the (State) Institutional Secretariat of (i) a copy of their tax return which contains information regarding owned properties (land and buildings) and the declaration which contains information regarding assets, financial assets and company shares held abroad (so-called DAPEF - *dichiarazione delle attività patrimoniali e finanziarie detenute all'estero e delle quote societarie ovunque detenute*) by the tax authorities, as well as (ii) data relating to their debt position by the Central Bank of San Marino. In addition, members of the

Great and General Council are required to declare annually whether (i) they hold corporate offices in companies, non-governmental organisations, associations and foundations or other legal entities, as well as professional associations; (ii) they own shares or units in San Marino resident companies or hold the position of settlors or beneficiaries of trust assets; (iii) they receive any kind of financial support or interest, including goods or services, other than the remuneration institutionally provided for their parliamentary mandate, and which are conferred by third parties in the context of their political activities, with an indication of the identity of these third parties. This information will be published on the website of the Great and General Council in order to ensure public accessibility and will be removed from the website as soon as such a member is removed from office for any other reason. The income tax return already includes information on the dependent persons, including the spouse if his/her income is below 7 500 EUR annually. After analysing the situation in other GRECO member States and discussing how to tackle this issue in San Marino, the heads of parliamentary groups considered that this measure approximates to part (ii) of the recommendation and ruled out the need of any further requirement in this respect.

22. GRECO welcomes that, in so far as part (i) of the recommendation is concerned, the Code of Conduct has introduced an obligation for parliamentarians to consent to the annual transmission and publication of the tax return, the DAPEF declaration and their debt obligations. This is in line with the recommendation.
23. As regards part (ii) of the recommendation, GRECO notes that, when introducing the financial declaration system for parliamentarians (a system which was completely lacking at the time of the Fourth Round Evaluation visit), the authorities considered whether/how to include in MPs declarations certain information about the spouse and dependent family members and decided to only require what is filed for income tax purposes, i.e. information of spouses with an income below 7 500 EUR annually. Therefore, GRECO accepts that the authorities have considered the matter, as required by the recommendation. However, it regrets that the end result of such consideration does not go all the way in terms of disclosure of financial information on spouses and dependant family members (it being understood that such information would not necessarily need to be made public).
24. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

#### **Recommendation v.**

25. *GRECO recommended that measures be taken to ensure effective supervision and enforcement of integrity-related rules (declaration requirements and standards of conduct) for parliamentarians.*
26. The authorities of San Marino refer to the Code of Conduct which has established the Advisory Committee, entrusted with providing concrete support on ethical issues and possible conflicts of interest. The Advisory Committee also decides on gifts received by parliamentarians, especially if they exceed the value of 100 EUR. A parliamentarian is required to comply with the Committee's guidance in any subsequent behaviour s/he intends to adopt. If a parliamentarian does not comply with the opinion or guidelines of the Advisory Committee, s/he may submit his/her reasons for disagreement. The Advisory Committee's opinion and the parliamentarian's reasons for disagreement will be made public. Regarding financial declarations, the Institutional Secretariat is responsible for their publication. The verification of their contents is the competency of tax authorities.
27. The authorities further add that, in the particular context and election system of San Marino, a direct relationship between the voter and the elected person is established.

Election is as an expression of confidence in certain individuals, rather than merely a method of appointment, and accountability ultimately takes place at the polls. The onus is therefore placed on the individual sense of responsibility of the parliamentarian to behave in an ethical manner, and it is the electorate, when they vote, who decide what to do about any misconduct.

28. GRECO notes the supporting role that the Advisory Committee and the Institutional Secretariat are to play regarding the implementation of the Code of Conduct. GRECO also takes note of the fact that the authorities have debated the approach to be taken regarding the particular enforcement of the Code and have established that, within the national context given the close relationship between elected representatives and their voters, political responsibility, would be effective enough to assure abidance by the rules. Although GRECO recognises that it is up to the country itself to decide how the supervision and enforcement of the Code could be best organised, it has some misgivings as to whether the current system would actually work in practice. Experience with the application of the newly adopted Code will be decisive and will help to better draw the consequences of breaches of its preventive rules.
29. GRECO understands that the current trust-based system is oriented primarily towards awareness-raising and internalisation of a parliamentary ethos. However, GRECO underlines the value of sanctions, which may be used as a last resort to enhance professional accountability and to preserve the credibility of the enforcement mechanism available in-house, before resorting to criminal law or leaving it to the electorate to punish the representative at a later stage at the polls. Such an approach would also have the merit of demonstrating to the public the determined commitment of the Great and General Council towards the integrity of its members. In this connection, GRECO points at the practice gathered, and the measures in place, in other member States to ensure the parliament's internal discipline and compliance with professional standards (for example, warnings, suspension of certain rights or benefits, exclusion from committees, naming and shaming, etc.).
30. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

31. *GRECO recommended (i) that training and awareness-raising measures be introduced for parliamentarians on corruption prevention and integrity-related matters and (ii) that a dedicated source of confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.*
32. The authorities of San Marino report that the Code of Conducts establishes an Advisory Committee, which is vested with a counselling role and can be consulted on a confidential basis. Likewise, the Advisory Committee is to promote appropriate information and awareness-raising activities. Further, on the basis of its experience, it shall issue a publication containing guidelines, indicative criteria and general ethical principles for parliamentarians, which are to be distributed to each individual member and also be made available for the general public. The publication may be periodically enriched with further explanations of good practices and practical examples that may arise from the experience of the Advisory Committee in dealing with individual cases.
33. The Code provides that the Advisory Committee be established with equal representation (party/ies in government/opposition parties) and for the duration of the legislature. It is assisted by the Director of the State Institutional Secretariat (or his/her delegate) and, if requested, by the State General Lawyer (or his/her delegate). The presidency of the Advisory Committee shall be held alternatively by

each of its members for a period of six months. Rules are devised regarding decision-making procedures.

34. GRECO welcomes that the recently adopted Code of Conduct establishes an awareness-raising and advisory system that has the potential to fulfil the requirements of the recommendation. However, the Advisory Committee is yet to become operational.
35. GRECO concludes that recommendation vi has been partly implemented.

#### *Corruption prevention in respect of judges and/or prosecutors<sup>5</sup>*

36. With regard to the recommendations addressed to judges and prosecutors, the authorities underline that the Republic of San Marino has approved an important reform of its judicial system, leading to the adoption of Constitutional Law No. 1/2021 and Qualified Law No. 2/2021. The authorities recall that in San Marino's legal system, a constitutional law must be approved by a qualified majority of two thirds of the Great and General Council, or by an absolute majority and a confirmatory referendum. A qualified law is approved by an absolute majority of the members of the Great and General Council. The two previous reforms of the judicial system took place in 2003 and 2011. Other administrative measures have been implemented in the justice sector, as described below.

#### **Recommendation vii.**

37. *GRECO recommended (i) changing the composition of the Judicial Council by providing that at least half of its members are judges elected by their peers, and, for non-judicial members, by excluding ex officio membership of members of the executive and the legislative; (ii) establishing objective and measurable selection criteria and a transparent selection procedure to endorse the professional qualities and impartiality of all members; and (iii) putting in place operational arrangements to ensure the effective performance of its functions in an institutionalised manner.*
38. The authorities of San Marino refer to the Constitutional Law No. 1/2021 on the Judiciary, Judicial System and Judicial Council, which entered into force on 12 December 2021. According to it, the Judicial Council is responsible for guaranteeing the autonomy and independence of the judiciary. It is composed of eight members: four magistrates (three Law Commissioners and one judge of appeal/highest judge of appeal, who are elected by their peers through qualified majority of two-thirds) and four lay members (elected by the Great and General Council, i.e., Parliament, by a qualified majority of two-thirds, from among San Marino nationals who are not magistrates, having the qualification of university professor of law or graduates in law or otherwise having consolidated experience in judicial matters. They cannot be members of Great and General Council or of the Congress of State). Lay members are not eligible for immediate re-election, while magistrates are eligible for immediate re-election only once. The Head Magistrate is an *ex officio* member with no right to vote; s/he is not taken into account for the purpose of calculating the structural and functional quorum for the adoption of decisions.
39. The authorities further elaborate on the assessment of the merits and qualities of the members of the Judicial Council. For magistrates, the objective and measurable selection criteria of competence, experience, understanding of judicial life, capacity for discussion, culture of independence and integrity are ensured in two respects: a)

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<sup>5</sup> It is recalled that in San Marino prosecutors and judges belong to the same professional order of "magistrates".

only magistrates confirmed in office and who have become permanent and highest ranking magistrates (Highest Judges of Appeal or Judges of Appeal) may be appointed; b) members who are magistrates are subject to the ethical rules of conduct provided for all magistrates by the recently approved Code of Ethics. As regards members who are not magistrates, elected by the legislative power, Constitutional Law No. 1/2021 expressly lays down the requirements in terms of competence and professional skills: only university professors of law, or graduates in law or otherwise having consolidated experience in judicial matters can be elected. In addition, they are elected by an enhanced two-thirds majority in Parliament, which helps to ensure their authoritativeness, impartiality, and neutrality from political influences. For them, Constitutional Law No. 1/2021 provides for expressed grounds for incompatibility (Article 15), extended also to relatives or cohabiting partners, while the Rules of Procedure of the Judicial Council (Article 4) establish that anyone "who is in a concrete and current situation of incompatibility or conflict of interest with regard to a given decision shall inform the Judicial Council and abstain." Lastly, the Judicial Council, during its first inaugural meeting, shall verify the qualifications and requirements of all members (Article 15(9) of Constitutional Law No. 1/2021). The Judicial Council actually verified the qualifications and requirements of the elected members during its first meeting on 17 March 2022. The CVs of Judicial Council members are public and available on the Judicial Council's website<sup>6</sup>.

40. The current lay members who are not magistrates were unanimously elected by Parliament. Two of them, who are lawyers qualified to practice law and have decades of experience, are also subject to the duties of conduct set out in the Statute of the Association of Lawyers, which, among other things, requires loyalty, moral integrity, and fairness. The other two are retired lawyers: one member boasts a long career both in the public administration, where she held management positions, and in other institutions (she was Captain Regent and member of the Parliamentary Commission for Justice); the other was several times President and member of the Governing Council of San Marino Association of Lawyers and Notaries, as well as a member of the Scientific Council of San Marino Legal Institute. None of these members who are not magistrates are active in politics. The selection of members who are not magistrates followed consultations among the members of the Association of Lawyers and Notaries, as well as other civil society stakeholders, which led to their unanimous appointment by the Great and General Council.
41. The term of office of the Judicial Council's members is four years from its first meeting. As a rule, it meets every three months, unless meetings are convened on the initiative of the Captains Regent or at the request of three elected members. Captains Regent preside the Judicial Council in their capacity of *super partes* and supreme guarantors of the Constitution; they have no voting rights and delegate the organisation and operation of the Judicial Council to the Head Magistrate. The Minister of Justice and the President of the Parliamentary Commission for Justice are not members of the Judicial Council. They are informed of the agenda of the Judicial Council's meetings and its decisions and may only intervene in such meetings to make communications or to provide or request clarifications. The authorities underline that this is an interaction aimed at dialogue and institutional exchange of views, which is necessary but not capable of unduly influencing the Council's decision-making process, in which the Minister of Justice and the President of the Parliamentary Commission for Justice do not participate and do not have the right to vote.
42. The decisions of the Judicial Council are adopted by a majority of those present who are entitled to a vote. In the event of a tie, decisions are deemed not to have been adopted. The law foresees that the Judicial Council adopts by a qualified majority its

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<sup>6</sup> <http://www.consigliogiudiziario.sm/on-line/home/composizione/componenti.html>.

Rules of Procedure; they were adopted on 20 April 2022. The members of the Judicial Council are not liable for the opinions expressed and the votes cast in the exercise of their functions.

43. GRECO notes with satisfaction that a thorough legislative reform has followed to address the various flaws identified in the Fourth Round Evaluation Report regarding the composition and functioning of the Judicial Council. The new system represents a complete overhaul providing for several safeguards of independence, including *inter alia*, exclusion of political membership, non-liability assurances, majorities required, voting rights and more generally, decision-making procedures (including during *interim* periods), etc. GRECO particularly welcomes that the *ex officio* membership of representatives of the executive and legislative powers in the Judicial Council has been abolished. The Captains Regent formally preside the Judicial Council but delegate the organisation and operation of the Judicial Council to the Head Magistrate<sup>7</sup>. It is recalled that Opinion No. 10 (2007), as well as the recent Opinion No. 24 (2021), of the Consultative Council of European Judges (CCJE)<sup>8</sup>, accept that in parliamentary systems, where the Head of State only has formal powers, there is no objection to appointing the Head of State to chair the council.
44. Constitutional Law No. 1/2021 also establishes clear criteria and procedures to select the (judicial and non-judicial) members of the Judicial Council. The aforementioned law further provides for greater institutionalisation of the Judicial Council with fixed regular meetings to be conveyed every three months, as well as the possibility to hold extraordinary meetings whenever necessary. Additional operational arrangements are included in the Rules of Procedure of the Judicial Council. These recent upgrades are all the more important given the key functions with which the Judicial Council is entrusted (recruitment, appointment, confirmation, advancement, assessment of professional skills and discipline of magistrates, opinions on the administration of justice and the organisation of judicial offices). GRECO, therefore, salutes the efforts made by the authorities to effectively meet all three components of recommendation vii.
45. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

46. *GRECO recommended ensuring that the appointment of judges, as well as the confirmation of permanent employment after the completion of a probationary period, as applicable, are thoroughly regulated according to clear and objective criteria, based on merit having regard to qualification, integrity, ability and efficiency, following a transparent procedure, which is sufficiently reasoned.*
47. The authorities of San Marino indicate that, according to Constitutional Act No. 1/2021, the recruitment of magistrates is carried out through either an internal career advancement procedure or an external competition. All candidates are required to have a law degree, a certain obligatory seniority and undergo an assessment of their professional skills. Such an assessment is carried out by the

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<sup>7</sup> San Marino is a parliamentary republic, headed by two Captains Regent, who are elected every six months by the Great and General Council (Parliament), usually amongst its members. The two Captains Regent jointly exercise the functions of Heads of State and Government, which are of a formal, representative and ceremonial nature, i.e., promulgating laws, directing and coordinating the procedures that precede the formation of the government, presiding over the major State bodies (Great and General Council, Congress of State, Council of the XII, Judicial Council, etc. The Regents represent a *super partes* body guaranteeing the constitution. Their duties include, at times of government crisis or absence, talking with the political parties to determine the possibility of forming a new government coalition, or convening political meetings. Moreover, in case of need or urgency, they have the power to pass laws through Regency Decrees, even though such decrees must be ratified within three months by the Great and General Council.

<sup>8</sup> See CCJE [Opinion No. 10 \(2007\), para 21](#), and [Opinion No. 24 \(2021\), para 35](#).

Judicial Council which, in case of internal career advancement, will request a specific report from the Head Magistrate, and, in case of external competition, will appoint a Selection Board, composed of three members one of whom acts as president and chosen from amongst legal experts of repute.

48. Appointment by internal career advancement of judges to the position of Judges of Appeal and Law Commissioners is guided by a number of criteria such as practical experience in the subject matter(s) relevant to the post to be filled, proven professional skills and knowledge of law also in view of qualifications held, balance in decision making by properly considering the rights of the parties, efficiency and accuracy in the organisation of judicial work and in decisions and measures taken, respectful behaviour towards lawyers, experts, assistants, registrars and staff. The Judicial Council will take seniority into account when choosing between candidates who have been assessed equally.
49. In case of external competition, Law Commissioners and Law Commissioner's Clerks (*Uditori Commissariali*) are recruited on the basis of a written and oral test which is carried out by the Selection Board to assess the candidates' knowledge of domestic law and the aptitude for factual assessment, reasoning based on evidence and principles as well as familiarity with interpretation techniques. External applications for the positions of Judges of Appeal, Highest Judge of Appeal, Judges for Extraordinary Remedies and Judges for Civil Liability Actions of Magistrates are assessed by the Selection Board on the basis of the candidates' resumes, qualifications and publications having regard to their knowledge of Sammarinese law, the expertise in the subject matter involved by the post to be filled and their practical experience.
50. Following the assessment of the candidates' professional skills, the Judicial Council appoints the selected magistrate(s) by means of a reasoned decree. A magistrate appointed through the career advancement procedure is not subject to any probationary period, whereas Law Commissioners and Judges of Appeal recruited through external competition are subject to a three-year probationary period, after which the Judicial Council decides whether to confirm them or not in office on a permanent basis. Confirmation of permanent employment takes place upon the completion of the assessment of professional skills, which will take into account the magistrate's full knowledge of national law and the capacity to manage the cases assigned to them during the probationary period, in terms of readiness, quality and effectiveness. The magistrate concerned is heard during the procedure for the assessment of professional skills.
51. Upon the successful completion of the probationary period and the subsequent confirmation of permanent employment, career magistrates remain in office until they reach the age of 70 and they cannot be removed unless they have reached the retirement age, have been dismissed from office following the establishment of disciplinary liability or permanent incapacity to perform their duties.
52. Regarding the highest ranks of the judiciary, Constitutional Law No. 1/2021 provides for a flexible system aimed at respecting, within the limits of reasonableness and proportionality, some objective peculiarities of the judicial system of a micro-State. The Highest Judge of Appeal, the Judge for Extraordinary Remedies and the Judge for Civil Liability Actions of Magistrates are magistrates "by specific task", for whom a less restrictive incompatibility regime is envisaged than for "career" magistrates (Article 10, Constitutional Law No. 1/2021). Indeed, they may perform academic and professional activities abroad, both during and after the expiry of their term of office. Therefore, they do not perform judicial functions in San Marino on an exclusive basis, but they may combine the performance of such functions with other work activities, in any case compatible with the former. Currently, these judges are professors at

Italian universities; some of them also work as lawyers in Italy, and one of them was Section President of the Council of State of Italy.

53. The fixed-term mandate of the aforementioned category of judges (five-year term, renewable only once) which may be renewed only once, is therefore justified in consideration of the fact that they do not perform their judicial activity in San Marino on an exclusive basis. Moreover, it is also explained by the limited workload of these magistrates, which - as shown by the most recent Head Magistrate's Report on the State of Justice for 2021 - is not such as to justify the performance of the magistrate's activity on an exclusive basis. Further, it would be very difficult within San Marino to find human resources meeting the high and rigorous requirements of professional skills laid down in Constitutional Law No. 1/2021 (Article 6). In addition, the possibility of combining the activity of judge in San Marino with other professional activities, regulated by a specific incompatibility regime, together with a time constraint applied to this mandate, makes it more attractive for highly qualified foreign jurists to work in San Marino. On the other hand, the exercise of the judicial function in San Marino on an exclusive and temporally unlimited basis would constitute a strong deterrent to the recruitment of highly qualified professionals already performing other, albeit permitted, activities abroad.
54. Finally, it should be noted that irremovability during the term of office envisaged for the other magistrates is also guaranteed for the Highest Judge of Appeal, the Judge for Extraordinary Remedies and the Judge for Civil Liability Actions of Magistrates, notwithstanding their fixed-term mandate. The possibility of renewal is given only once; the appointment procedure, like the renewal procedure, requires a large majority of three quarters of the members of the Judicial Council.
55. GRECO notes that the recruitment/appointment of magistrates, whether coming from inside or outside the judicial career, is not exclusively based on seniority but on the assessment of a set of clear and objective criteria. In addition, the Judicial Council is required to give reasons regarding the appointment decision. Furthermore, the confirmation of permanent employment for candidates recruited through an external competition is subject to an assessment of their professional skills on the basis of clear and objective criteria. The magistrate concerned is given the opportunity to be heard before the Judicial Council as part of the confirmation procedure.
56. As regards the Highest Judge of Appeal, the Judge for Extraordinary Remedies, and the Judge for Civil Liability Actions of Magistrates, while they do not enjoy permanent tenure as other magistrates in San Marino, GRECO is satisfied with the additional clarifications provided by the authorities which justify their fixed-term appointment. GRECO notes that European practice is generally to make full-time appointments until the legal retirement age. However, when this is not the case and tenure is limited, international standards call for particular attention to be paid to the objectivity and transparency of the method of appointment and re-appointment. This is indeed the case in San Marino: recruitment criteria are strictly regulated by law and decisions are made objectively and on merit by an independent body, the Judicial Council, the possibility of renewal is restricted (only once), and the principle of irremovability during the (fixed) term of office also applies for these judges.
57. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

### **Recommendation ix.**

58. *GRECO recommended thoroughly regulating the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the head of the court (whether s/he comes from inside or outside the judicial career).*
59. The authorities of San Marino refer to the changes and clarifications introduced by both the Constitutional Act No. 1/2021 (Articles 14 and 15) and the Rules of Procedure of the Judicial Council (Article 30) regarding the Head Magistrate. The Head Magistrate can be appointed either from inside the judicial career or from outside the judicial career. Thus, a magistrate, who has been serving for at least five years, can be appointed by the Judicial Council as the Head Magistrate for a four-year term which can be renewed once. The Judicial Council may, in exceptional and contingent circumstances, appoint the Head Magistrate from among persons outside the judiciary. The authorities decided not to provide for an exhaustive and standardised list of grounds which would determine the appointment of the Head Magistrate from outside the judicial career, and instead have more flexibility to deal with structural critical situations. Even so, the appointment is made for a limited period of three years and is only renewable for a further two years' term if the above-mentioned structural critical issues persist. On the other hand, the absence of a precise mandatory list of cases in which it is permissible to appoint a Head Magistrate from outside the judicial career is counterbalanced by the strict duty to give reasons for the appointment decision, which, at the end of a specific procedure governed by the Rules of Procedure of the Judicial Council, must indicate the specific circumstances justifying it.
60. The rules provide for a transparent and detailed appointment procedure that ends with a reasoned decision by the Judicial Council with regard to predetermined and objective selection criteria based on merit, taking into account qualifications, integrity, management skills, competence and efficiency. Likewise, the law provides for the grounds of removal of the Head Magistrate and require a decision of the Judicial Council adopted by a three-fourths majority.
61. Constitutional Act No. 1/2021 establishes that the Head Magistrate is responsible for: organising the work of the court and individual magistrates, exercising supervision over the magistrates, with the power to access and acquire information useful to perform their functions, coordinating and directing judicial offices by supervising the exercise of administrative functions, participating in the Judicial Council and drawing up, in the cases provided for by law, the appropriate reports envisaged by law, reporting to the Judicial Council any facts that may constitute disciplinary offences perpetrated by magistrates, reporting to the Parliamentary Commission for Justice *in camera* when at least one third of it so requests and in the cases provided for by law, submitting to the Great and General Council, through the Parliamentary Commission for Justice and following acknowledgment by the Judicial Council, an annual report on the state of justice, and deciding, by reasoned decisions, on applications for abstention within ten days of their receipt, and ordering, if such applications are admitted, the transfer of the file to another judge, in accordance with the established rotation criteria.
62. GRECO is pleased to note that the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the Head Magistrate (whether s/he comes from inside or outside the judicial career) have been further articulated by Constitutional Act No. 1/2021 and the Rules of Procedure of the Judicial Council. More particularly, appointment criteria and procedure are spelled out in the rules, reappointment has been limited to only once (i.e. a total of two terms of office), removal is subject to objective and reasoned grounds and the relevant decision is

taken by qualified majority of the Judicial Council. The applicable rules also establish a clear, exhaustive list of the responsibilities of the Head Magistrate.

63. GRECO concludes that recommendation ix has been implemented satisfactorily.

**Recommendation x.**

64. *GRECO recommended ensuring consistency, objectivity, transparency and fairness of case allocation, including by strengthening assignment criteria.*
65. The authorities of San Marino report that on 4 November 2020 the Head Magistrate, having consulted with all magistrates of the Court and Judges of Appeal, issued a decree regulating the allocation of judicial work. The decree lays down the general criteria for the distribution of cases, which are allocated to each magistrate in accordance with subject matters of cases for which magistrates are responsible. When more than one magistrate is responsible for the same subject matter, cases are distributed in accordance with the order in which the cases have been registered and alphabetical order of the magistrates' surname. Priority criteria, criteria for replacements due to contingencies (objections abstentions, incompatibilities, etc.), including – as a last resort – distribution by lots, are also used<sup>9</sup>. Lastly, no judges were assigned to work on cases on an ad-hoc basis.
66. GRECO welcomes the adoption of the new decree on the assignment of cases, aiming for a consistent, objective, transparent and fair system, on the basis of the subject matter of cases (and judges' area of expertise), their date of registration and alphabetical order of the magistrates' surname. Time and experience will show whether the system will need further adjustments.
67. GRECO concludes that recommendation x has been implemented satisfactorily.

**Recommendation xi.**

68. *GRECO recommended (i) conducting an analysis of the workload, internal procedures and resources (human and technical) of the judicial system, with a view to improving and streamlining its operation and guaranteeing that cases are allocated and adjudicated without undue delay and (ii) ensuring that appropriate implementation measures are taken thereafter. The process for carrying out such an analysis should be as inclusive as possible (including through consultation, first and foremost of judges themselves, as well as the legal profession and civil society) and that the results are publicised accordingly.*
69. The authorities of San Marino report that, following a thorough analysis of judicial work and extensive discussion and consultation among magistrates and lawyers, important improvements have taken place to improve and streamline the operation of the judiciary, including by redesigning the internal organisation of the Court through the application of a court management system. Law No. 23/2022 introduces key changes regarding the procedure on abstention and recusal of judges, which was previously characterised by excessive complexity and cumbersomeness. The new rules are aimed at making the procedure more flexible and expeditious in line with the principle of procedural economy. Law No. 24/2022 reforms the criminal procedure, with priority being given to ensure the respect for the rights of defence, the expedition of proceedings and effective remedies for undue delay, judicial economy, publicity of proceedings and independence of judges.

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<sup>9</sup> For concrete information on priority criteria and the distribution of workload within the court, see the Head Magistrate's Decree of 4 November 2020, paragraph II.5 and paragraph IV letter d, and the Head Magistrate's Decree of 4 March 2021, paragraph III.1: Annexes 2 and 3.

70. The authorities have also referred to an information note covering the period November 2020- September 2021, which the Head of the Court had transmitted to the Judicial Council and had subsequently been made public. The note contains, *inter alia*, statistical information pointing at a general decreasing trend in case backlog<sup>10</sup>. As regards staffing levels, the Judicial Council has made a number of judicial appointments: two Judges of Extraordinary Remedies, two judges at the third instance, four judges examining civil liability actions against judges, two Law Commissioners and two Law Commissioner's Clerks (*Uditori Commissariali*).
71. GRECO welcomes the multifaceted reform that has been introduced to improve and streamline the operation of the judicial system and guarantee that cases are allocated and adjudicated without undue delay. The reform has been guided by a thorough analysis of the state-of-the art and has followed an inclusive consultation process with magistrates and lawyers; outcomes have also been made public. GRECO notes that, on the whole, there has been a reduction of the backlog which is reportedly largely due to an increase of the staffing levels and the application of the "court management" method (instead of the individualist "case management" method). Further positive developments are expected due to the upgrades introduced in criminal proceedings and recusal mechanisms.
72. GRECO concludes that recommendation xi has been implemented satisfactorily.

### **Recommendation xii.**

73. *GRECO recommended (i) increasing the transparency and accessibility of information to the public on judicial activity; and (ii) ensuring that all court decisions are published in a user-friendly format, preferably by using IT technology, and made available to all the legal professions and to the public at large.*
74. The authorities of San Marino report that the Annual Report on the State of Justice is published on the websites of the Great and General Council and the Judicial Council. On 28 March 2022, the Director of the Court filed the 2021 Report on the State of Justice, which covers the period 1 November 2020 to 31 December 2021, and also contains specific remarks and assessments regarding the period 2018-2020.
75. Regarding the publication of court rulings, all decisions of the Constitutional Court are digitalised and published on the dedicated website: <http://www.collegiogarante.sm/on-line/home.html>. The decisions of the Highest Judges of Appeal and of the Judges for Extraordinary Remedies are also promptly digitalised and immediately made available online. In addition, a specific memorandum was concluded in 2019 between some ministries (Ministry of Justice and Ministry of Education, Culture and University, Research, Information), the Director of the Department of Institutional Affairs and Justice, the Court, the Association of Lawyers and Notaries, and San Marino Legal Institute, by virtue of

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<sup>10</sup> The information note provides, *inter alia*, with the following data: (i) as regards civil proceedings, the backlog decreased to 44 pending cases in 2021 (compared to 105 cases pending in 2018, 136 pending cases in 2019 and 181 cases pending in 2020); (ii) as to criminal proceedings at the investigative stage, the backlog experienced a decrease in 2021 to 672 pending cases, following a sharp increase in 2018 and 2019 (compared to 928 cases pending in 2017, 1,284 pending cases in 2018, 1,461 pending cases in 2019 and 946 pending cases in 2020); (iii) concerning criminal proceedings before the first instance, there was a sharp increase of pending case in 2021, totalling 244 (compared to 75 pending cases in 2018, 87 pending cases in 2019 and 146 pending cases in 2020); (iv) regarding criminal proceedings on appeal, there was a slight decrease of the backlog, which stood at 42 cases pending in 2021 (compared to 43 cases pending in 2018, 53 cases pending in 2019 and 49 pending cases in 2020); (v) a slight increase characterised the backlog of administrative proceedings at the first instance, which stood at 78 pending cases in 2021 (compared to 98 cases pending in 2018, 99 cases pending in 2019 and 71 pending cases in 2020); (vi) there was a decrease of administrative proceedings on appeal, the backlog of which was 33 cases pending in 2021 (compared to 31 cases pending in 2018, 40 pending cases in 2019 and 39 cases pending in 2020).

which the case law is published on the Institute's website by maxim of the judgement (<https://www.giurisprudenzasm.org/>).

76. GRECO notes that, in so far as part (i) of the recommendation is concerned, the Fourth Round Evaluation Report stated that the annual reports were difficult to locate online and that there were delays with their publication. GRECO welcomes that the website of the Judicial Council, and that of the Great and General Council, provide for a dedicated section where annual reports are gathered. However, the latest available report dates from 2018. GRECO understands that publication of the 2021 report is imminent, following its submission in April 2022 to the Great and General Council. This report will also include information from 2018 to 2021. GRECO underlines the importance of timely information and regrets the absence of annual reports in 2018, 2019 and 2020. GRECO trusts that with the statutory deadlines and procedures which are now fixed in Constitutional Law No. 1/2021 (Article 14(3)), this type of irregularity will no longer occur.
77. As regards part (ii) of the recommendation, GRECO notes that the decisions of the highest courts are now digitalised and made accessible online. Work on the compilation of other relevant case-law has further progressed, as entrusted to the San Marino Legal Institute; funds were secured in 2019 to this end. In light of the targeted improvements reported, GRECO considers that both components of recommendation xii have been addressed and transparency of judicial work thereby increased.
78. GRECO concludes that recommendation xii has been dealt with in a satisfactory manner.

#### **Recommendation xiii.**

79. *GRECO recommended that (i) an updated code of conduct for judges, accompanied by explanatory comments and/or practical examples (with a particular emphasis on conflicts of interests and incompatibilities), be adopted and made easily accessible to the public; (ii) that it be coupled with support measures for its supervision and enforcement; and (iii) that dedicated training on ethics and integrity matters be offered on induction and at regular intervals thereafter.*
80. The authorities of San Marino report that, by Decision No. 2/2022, the Judicial Council adopted a Code of Ethics for judges. The Code describes fundamental values, matters relating to relations with civil society and users, relations with the press, prohibition to use information pertaining to the judge's office for non-institutional purposes, political activity and membership of associations and rules of conduct common to all magistrates. The last articles consist of specific rules of conduct for investigating and deciding judges in criminal matters, *Procuratori del Fisco*, the Law Commissioners and the Head Magistrate.
81. As regards the enforcement of the Code of Ethics, if the violations are particularly serious or repeated, they may give rise to disciplinary liability, pursuant to Article 33 of the Rules of Procedure of the Judicial Council regarding disciplinary proceedings involving magistrates. As to other supporting, advisory and awareness-raising measures, it is foreseen that some of the inception/in-service training courses that magistrates are to follow (Article 13, Constitutional Law No. 1/2021), which are also to be held at the Italian School for the Judiciary, are specifically devoted to issues related to professional ethics. The current lack in San Marino of significant disciplinary case law prevents the establishment of practical guidelines on its application, although this is offset by the easy identification, study and use of specific "precedents" in Italy based on the disciplinary case law of the Higher Judicial Council and of the joint civil Sections of the Court of Cassation. Lastly, the Head Magistrate

has undertaken to convene special meetings of Magistrates dedicated to the interpretation and application of the rules of professional ethics.

82. GRECO welcomes the recent adoption of a Code of Ethics and its content which is based on fundamental values of the judiciary, relations to parties, civil society, rules of conduct, etc. While the Code does not include specific sanctions, GRECO notes that breaches may entail disciplinary action, as appropriate. As for other supporting mechanisms for the Code, including training and advisory services, several positive developments are in the pipeline; they, however, await effective implementation.
83. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

84. *GRECO recommended that the legal framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, proportionality and effectiveness, including by (i) further articulating the requirements for initiating disciplinary proceedings; (ii) defining disciplinary infringements and coupling them with a nuanced range of sanctions; (iii) providing for appeal channels.*
85. The authorities of San Marino refer to Constitutional Act No. 1/2021, which provides that disciplinary action may be initiated, also on the basis of individuals' reports and complaints (even on an anonymous basis), by the Head Magistrate or at least one third of the Parliamentary Commission for Justice. Disciplinary liability is engaged if a magistrate violates his/her duties through wilful intent or gross negligence, or if s/he engages in conduct, either in office or out of office, which, by its objective seriousness, renders him/her undeserving of the trust and consideration that s/he should enjoy, or which damages the prestige of the judicial order.
86. The preliminary investigation of an alleged disciplinary breach is entrusted to a Law Commissioner who has been appointed by the Judicial Council, on a rotating basis, for one year. Following the conclusion of the preliminary investigation, the Law Commissioner may decide, by a reasoned decision, either that the facts alleged of are manifestly ill-founded or that they warrant a disciplinary action, in which case the disciplinary decision is referred to the Judicial Council. An appeal may be lodged against the Law Commissioner's decision with the Judge of Appeal, who has been appointed for this purpose by the Judicial Council, on a rotating basis, for one year. If the Judge of Appeal decides to refer the case to the Judicial Council for a disciplinary decision, the Judicial Council may order of its own motion or at the request of the body that initiated the proceedings the precautionary suspension of the concerned magistrate. An appeal may be lodged against the precautionary measure with the Constitutional Court (*Collegio Garante*).
87. Disciplinary proceedings before the Judicial Council are adversarial in nature in that the concerned magistrate is heard and represented by a lawyer, s/he may submit evidence and request that witnesses be heard, or documentary evidence be administered. If it considers it necessary, the Judicial Council may also hear witnesses or administer documents. It takes a reasoned decision in favour of imposing disciplinary sanctions by a simple majority. Disciplinary sanctions may be appealed before the Constitutional Court.
88. Constitutional Act No. 1/2021 (Article 12) lists down specific instances of disciplinary offences, which may be committed by magistrates or the Head Magistrate. Disciplinary sanctions, which apply in accordance with the principles of progression and proportionality, include, in ascending order of severity, warning, censure, suspension of remuneration and removal from office (dismissal). The statutory provisions further regulate specific instances of the application of each disciplinary

sanction. A disciplinary offence becomes time-barred if three years have elapsed since its occurrence.

89. GRECO notes that, regarding the first part of the recommendation, the Constitutional Act No. 1/2021 sets out the requirements needed for engaging disciplinary liability and, consequently, initiating disciplinary proceedings. As to the second part of the recommendation, the law further defines specific disciplinary offences and has laid down a range of sanctions, starting from warning and censure and culminating with the most serious measure of dismissal from office. Lastly, in so far as the third part of the recommendation is concerned, the law provides for effective possibilities of appeal during the various stages of the disciplinary proceedings.
90. GRECO concludes that recommendation xiv has been implemented satisfactorily.

### **III. CONCLUSIONS**

91. **In view of the foregoing, GRECO concludes that San Marino has implemented satisfactorily or dealt with in a satisfactory manner ten of the fourteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, three have been partly implemented and one has not been implemented.
92. More specifically, recommendations iii, vii, ix, x, xi and xiv have been implemented satisfactorily, recommendations i, iv, viii and xii have been dealt with in a satisfactory manner, recommendations ii, vi and xiii have been partly implemented, and recommendation v has not been implemented.
93. With respect to members of parliament, GRECO welcomes the adoption of the Code of Conduct. The establishment of the Advisory Committee, entrusted with providing concrete support on ethical issues and potential conflicts of interest, as well as the obligation to disclose ad hoc conflicts of interest, are also encouraging developments. Moreover, the Code of Conduct has provided for the publication of parliamentarians' financial declarations (assets, income, liabilities and interests). Given the recent enactment of the Code, additional improvements await once the Advisory Committee starts to operate, particularly regarding hands-on guidance, counselling and awareness raising measures; GRECO thus expects updates in this regard. GRECO further calls on the authorities to develop an effective supervision and enforcement regime of the Code of Conduct.
94. As far as the judiciary is concerned, GRECO particularly welcomes the vast reform undertaken regarding the composition and functioning of the Judicial Council and the greater guarantees of independence with which it has been vested, notably, by excluding political membership. Positive measures have been introduced to better regulate the recruitment of magistrates (including through internal career advancement processes) and to clarify the appointment, mandate, renewal, revocation, and responsibility of the head of the court. Multifaceted initiatives, of both a legislative and a more practical nature, have been put in place to improve and streamline the operation of the judicial system, and enhance the transparency of judicial work. The recent adoption of a Code of Ethics for magistrates also constitutes a valuable development; it is yet to be coupled with practical guidance, training and awareness raising measures. Finally, GRECO is pleased to note that the disciplinary system of magistrates has been further articulated to strengthen its objectivity and proportionality.
95. San Marino has undertaken significant reforms to address the recommendations issued by GRECO in the Fourth Evaluation Round. The authorities must be commended for their determined and thorough work. GRECO encourages San Marino

to pursue its efforts regarding the implementation of the outstanding recommendations. It invites the Head of delegation of San Marino to submit additional information regarding the implementation of recommendations ii, v, vi and xiii by 31 December 2023.

96. Finally, GRECO invites the authorities of San Marino to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.