Comments of the San Marino Government to the Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to San Marino from 9 to 10 June 2015 [document CommDH(2015)22]

COMMENT ON PARAGRAPH 9 OF THE REPORT

As an integration to paragraph 9, worth adding is that no indictment occurred for the offence referred to in Article 192 bis. From 2011 to 2014, 8 criminal proceedings were registered and they were all dismissed.
The most recent decision adopted by the Law Commissioner on 27 January 2015 to dismiss the joined criminal proceedings no. 801/13 and no. 809/13, relating to the disclosure of information on criminal proceedings for criminal association and laundering of proceeds from corruption committed by members of Parliament and Government, recalls the judgements of the ECHR of 7 June 2007 in the case Depuis v. France and of 1 July 2014 in the case A.B. v. Switzerland.

COMMENT ON PARAGRAPH 17 OF THE REPORT

San Marino legislator has chosen to make a distinction between the body drafting the Code of Ethics (*Consulta*) and the body applying it (Guarantor Authority) as a guarantee of proper application of rules and to avoid that the judging body and the judged body coincide, thus preventing possible corporate abuses.
The Guarantor Authority is politically appointed, however majority and opposition parliamentary groups, as well as the Minister responsible for Information and the *Consulta*, must indicate experts in this field: as such they are chosen by Parliament.
The possibility is not excluded that several members of the Authority are journalists, since there is no rule contrary to this.
Finally, it should be noted that the Code of Ethics will have to envisage mechanisms to appeal against decisions adopted by the Guarantor Authority, so that each decision is submitted to and examined by a higher control body, which is equally a third and impartial body.

COMMENT ON PARAGRAPH 50 OF THE REPORT

With regard to paragraph 50, worth underlining is that San Marino legal system does not envisage any withdrawal of legal capacity, which is a right of every human being from birth and cannot be limited. Instead, it provides for withdrawal of the capacity to act, which is the ability to take action in order to change one's own legal position and is acquired at the age of majority (18 years).

Worth specifying is also that interdiction and incapacitation only affect the ability to dispose of assets and not the exercise of other rights not related to assets. With regard to the exercise of personal rights, the guardian of an interdicted person is authorised to take action only in cases where this is expressly recognised by law, while the curator of an incapacitated person is not entitled to replace him/her.

Therefore, interdiction and incapacitation pertain to the ability to act and not to legal capacity, i.e. to the exclusive exercise of property rights, which are exercised by the

guardian and by the curator under the control of the Law Commissioner and the Family Council (composed of the Commissioner presiding over it and of four consultants, chosen from among the closest blood relatives and relatives by affinity, or failing these, from among other principled and expert citizens), after hearing the interested person.

Today, interdiction may be applied only to situations in which there is a need for protection of the disabled person's assets, which cannot be met through the appointment of a support administrator. On the other hand, since the support administrator is responsible for taking care of the disabled and for meeting his/her need for well-being, his appointment may also be requested for persons already subject to interdiction or incapacitation (Art. 2 of Law no. 81 of 5 June 2015).