Secretariat of State for Foreign and Political Affairs

of the Republic of San Marino

SUMMARY OF THE FINAL REPORT

prepared by the Technical Group for the Assessment of new Policies for the Integration with the European Union

San Marino

February 2011/1710 d.F.R

In the front page:

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Republic of San Marino - February 2011/1710 d.F.R.

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PRESENTATION

Dear Fellow Citizens,

it is for me a great pleasure to present this work, which summarises the contents and the main conclusions of the Final Report prepared by the Technical Group for the Assessment of new Policies for the Integration with the European Union, presented to the Great and General Council during the session held in December 2010.

First of all, I wish to express my satisfaction for making available to the people of San Marino a document which, although not exhaustive, represents, however, an excellent baseline for taking political decisions which are of high importance for the future of the Republic.

This work, coordinated by the Department of Foreign Affairs, gathers the contributions received from the economic environment, professionals, trade representatives, and all of those who, every day, face the pros and cons of the current position of San Marino within the European context.

This document is a quality product, entirely made in San Marino, which demonstrates that this country has valid professional profiles who, when involved on major issues, are capable of committing themselves and give their best. The methodology followed in this work proved to be successful insofar as it has allowed an as wide as possible analysis focused on the problems and needs of San Marino, and in that it made useful proposals for the decisions that will have to be taken.

The methodology applied has been greatly appreciated also by the representatives of the European Union, who appreciated the proactive and pragmatic approach, the fact that so many players other than politicians were involved since the initial steps of the project, the soundness of this attempt to analyse and further elaborate all the different issues, as well as the quality of the commitment and of the results achieved. The foregoing is something the people of San Marino should be proud of.

Based on this technical contribution, the politicians should be able to identify the best policies in order to foster the path toward a better integration with the European Union, taking due account of our problems and peculiarities as well as of the expectations and availability of the other parties of the negotiations. Such negotiations will certainly be complex, but the result thereof will see a nation much stronger and better equipped than today in facing international challenges.

The contacts I had during this office with the representatives of the European Union, even at the highest level, evidenced the availability to foster the path of San Marino towards a higher European integration. This availability had never been showed before and is favoured by the recognition of the great progresses made by San Marino over the past two years in adopting the international cooperation and transparency standards. Nevertheless, there is still a lot to do to give this country the opportunity to communicate daily with other legal systems, without any ambiguities and problems.

I hope that, also thanks to this document, this country will be able to prove that it is in tune with the times and ready for the challenges that San Marino will have to face.

I am confident that San Marino will succeed, with the contribution of all of those who will offer their support. As for me, I hereby ensure that I will continue to avail myself of the contribution that the participants in the Working Group will be able to offer during the negotiations.

A change is urgently needed and will require the country to make and unprecedented effort also in terms of qualification: this is a great challenge, for which the contribution of each and everyone will be important. This process will have its difficulties, but it will bring great benefits to the country, since

quality pays off, always and everywhere. This will bring more certainties to the people of San Marino and will offer new growth, training and work opportunities to the young generation; in one word: life.

Antonella Mularoni

Secretary of State for Foreign and Political Affairs

THE TECHNICAL GROUP FOR THE ASSESSMENT OF NEW POLICIES FOR THE INTEGRATION WITH THE EUROPEAN UNION

WHY?

The creation of the Working Group has been requested by the Congress of State (the Government of San Marino) upon the proposal of the Secretary of State for Foreign Affairs, in response to the need to make an in-depth analysis of the problems resulting for San Marino from being a third State with respect to the EU. The purpose is to analyse the European issues in-depth and to outline any possible scenarios resulting from a path (if any) towards the integration with Europe.

Existing relations with the EU no longer satisfy the needs for integration of this country. San Marino has become aware of the fact that it is now facing new challenges: the uncertainty caused by the economic-financial crisis; the need to expand the access to the European markets of both goods and services for enterprises and consumers of San Marino; the need to expand the potentials of the people of San Marino, allowing them to study, move and work in Europe without any restrictions; the opportunity to develop and expand the economic activities of the enterprises in San Marino; the need to widen the horizons also for the financial and banking services of San Marino; the worsening of the bilateral relations with Italy.

WHO?

Technical experts belonging to all political parties and the representatives of trade associations, trade unions, professional associations, as well as the different offices of the Public Administration, were invited to participate in the Group. The officers of the Department of Foreign Affairs have arranged the different steps of the research on the community laws, organised and chaired the meetings of the Group and, thanks to the contributions provided by the members of the Group, took care of the preparation of the final report.

HOW?

The Group has been structured in subgroups for specific themes, which were established on the basis of the preferences expressed by its members, taking into account the technical-professional expertise of each one of them. As regards the treatment of specific issues with a high level of complexity, it has been decided to call focused meetings of restricted technical groups with professional persons having specific preparation in the field in question, as well as with the competent offices of the Public Administration. The results achieved during such restricted meetings have been reported to the plenary meeting, with the purpose of summarising the critical points raised and placing the results within the three integration scenarios.

WHAT DID IT DO?

The possibilities of integration were identified based on the current status of the relations with the EU, governed by the Agreement on Cooperation and Customs Union, in light of the existing economic-financial crisis, and of the fact that such Agreement on Cooperation and Customs Union is not fully developed yet. These are the possible integration scenarios identified:

a) The review and expansion of the Agreement on Cooperation and Customs Union, in light of the evolutionary clause included under article 19 thereof;

b) Becoming a member of the European Economic Area, an agreement which ensures to its members the application of the 4 freedoms which form the basis of the European Single Market, although it does not imply full accession to the EU;

c) Accession to the EU, which would entail the opening of the negotiations with the competent EU institutions in order to achieve full integration.

It has been decided to analyse the 4 fundamental freedoms on which the European Single Market is based - free movement of goods, services, capital and persons - because they represent the core of the *acquis* (approximately 70%), virtually included in its entirety in the EEA Agreement. This allowed a more effective comparison of the scenarios for becoming a member of the EEA or of the EU. In addition, other horizontal issues were identified, i.e. taxation, which are necessary to the completion of the Single Market and were deemed by the Group to be amongst those which entail the highest degree of complexity, in light of the current status of San Marino as a non-member country.

It is possible to make an assessment in terms of benefits and disadvantages for several aspects considered in the analysis, whereas in some other cases the implications which feature each scenario change according to the perspective of a specific social or economic class.

THE RELATIONS WITH THE EUROPEAN UNION: WHERE ARE WE?

The Republic of San Marino is not entirely a non-member country with respect to the European Union. As a matter of fact, there are many agreements and understandings that, during the last few years, led to some forms of positive integration and cooperation with the EU:

- The customs union and the cooperation sanctioned in the Agreement on Cooperation and Customs Unions between the European Economic Community and the Republic of San Marino, signed in Brussels on 16 December 1991, which came into force, as regards the cooperation, in April 2002. This agreement creates a customs union, that is to say that it entails the abolition of customs duties as regards both import and export, and of the taxes with similar effect existing between San Marino and the EEC. San Marino undertakes to apply the ordinary customs tariff to the goods coming from non-member countries and to apply the provisions of the common commercial policy, as well as the community regulations concerning movements of agricultural products, veterinary, plant health and qualitative issues. The Agreement also contains provisions for the cooperation within the fields of economy, environmental protection, tourism and culture. A Cooperation Committee is established, in charge of managing the Agreement and regulating the associated technical aspects. Article 19 contains an evolutionary clause for the Agreement in which it is provided that the contracting parties may extend the scope of the Agreement by mutual consent, in order to complete the sectors of cooperation by means of agreements concerning specific sectors or activities. As of today, the possibilities offered by virtue of art. 19 have not been explored yet. Finally, certain provisions have been included as regards social issues, so as to establish the mutual recognition of a non-discriminatory system for work conditions and compensations to the citizens who work on the territory of the other contracting party, according to their nationality. It also provides for the equal treatment as regards social security. Since the Cooperation Committee has not intervened yet in this sector with the adoption of any provisions which would define the procedures for the administrative cooperation, the bilateral agreements entered into by San Marino with certain European countries and related to social security issues are still in force and effective.

  Finally, the opportunity offered by the provisions of article 26 of Title IV has never been exploited. Article 26 of Title IV allows the parties, within 5 years from the entry into force of the

Agreement, to review the results achieved with the application of the Agreement and, possibly, to start the negotiations for its amendment. The *Omnibus* decision of the EU-San Marino Cooperation Committee, which completed its process in 2010, defines the requirements resulting from the coming into force of the Agreement on Cooperation and Customs. The 'Omnibus Decision', in practice, implements in one single decision all the regulations, decisions and Community directives adopted by San Marino in compliance with the provisions of the Interim Agreement on Trade and Customs Union, entered into on a temporary basis pending the ratification of the Agreement of 1991 by all of the Member States of the EU and now no longer effective following the entry into force of the Agreement on Cooperation and Customs Union.

- The Agreement on the Taxation of Savings Income in the form of Interest Payments, which provides for measures equivalent to those provided in Directive 2003/48/EC, commonly known as ECOFIN Agreement, which came into force in 2005. This directive expresses the agreement of Europe on the need to abolish the bank secrecy for tax purposes within the EU, and is aimed at countering harmful tax competition in order to allow the Member States to achieve a fair and effective tax treatment of the income of their residents within the entire territory of the EU. In order to avoid the outflow of capitals from the Community towards non-member countries, the adoption of the directive has been subject to the conclusion of some agreements with some non-member countries (Switzerland, Liechtenstein, Monaco, Andorra, San Marino) on the implementation of equivalent measures aimed at ensuring that any cross-border savings income in the form of interest payments be subject to taxation in the Member State of residence of the taxpayer, in compliance with its internal laws and regulations.

- The monetary union established on the basis of the Monetary Agreement, executed in 2000 and which came into force in 2001. It establishes the right of San Marino to use the euro as its official currency, and its duty to apply, within its territory, the Community regulations concerning banknotes and coins denominated in euro. The Republic of San Marino may issue a predetermined amount of coins in euro, identical to those issued by the members of the EU, and is required to use only the Italian Istituto Poligrafico e Zecca dello Stato for their coin. The financial entities located in San Marino have access to the payment systems of the euro area through the Italian payment systems and hence, on basis which are determined by the Bank of Italy, with the consent of the European Central Bank. Recently, upon prompting by the Council, the European Commission started a new negotiation of the Monetary Agreement (reference should be made to the fact sheet on the free movement of capital).

The existence of the aforementioned agreements explains the reason why, in certain sectors, the laws of San Marino are in line, or partly in line, with those of the European Community, whereas they are different in other sectors which are not covered by any agreement, or which are covered by agreements that are not entirely used.

Therefore, it is necessary to develop the relations with the EU, taking into account, however, that they do not start from the very beginning.

WHAT IS IT ABOUT? COMPARISON BETWEEN EUROPEAN UNION AND EUROPEAN ECONOMIC AREA

EUROPEAN UNION: What Is It?

The European Union is an organisation, or, rather, an union of States which is granted by its members, i.e. 27 European countries, certain powers in order to pursue common objectives. It is based on the

Treaty on European Union and on the Treaty on the Functioning of the European Union, as lastly amended by the Treaty of Lisbon, which came into force on 1 December 2009.

Aim of the Union is to promote the peace and well-being of its people. It delivers to its citizens a space of freedom, security and justice without any internal borders, creates an internal market through customs union, defines the common commercial policy and prepares guidelines for a common foreign policy and defence. Finally, it establishes an economic and monetary union with the euro as currency.

Specifically, the EU is based on the creation of a Common Internal Market in which 4 fundamental freedoms are guaranteed: The free movement of goods, services, capital and persons.

By virtue of the principle of attribution, the Union acts exclusively within the limits of the powers conferred by the Member States in the Treaties, for the purpose of achieving the objectives set by the Member States. Any power not conferred to the Union under the Treaties is conferred to the Member States.

How Does It Work?

In order to achieve its objectives, the Member States have established institutions and bodies entitled to approve the legislation of the European Union and ensure the application thereof. The most important of these institutions are the following:

- The European Parliament, which represents the European people, is the voice of the European citizens and is elected by them every five years. Its main task is to approve the European laws based on the proposals submitted by the Commission. The Parliament shares this responsibility with the Council of the European Union. The Parliament and the Council also share the power to approve the annual budget of the EU, which currently amounts to 130 billion euros. In addition, the Parliament has the power to dismiss the European Commission. The members of the European Parliament do not seat in the Parliament divided in country blocks, but, instead, are divided into eight European political groups. These groups correspond to political parties. The members of the European Parliament represent all views on European integration, from the strongly pro-federalist to the openly Eurosceptic. The main sittings of the Parliament are held in Strasbourg - France - and the other in Brussels - Belgium. Just as the other institutions of the Community, the Parliament works in all of the 23 official languages of the Union. The Parliament elects the European Ombudsman, which investigates the reports from the citizens concerning cases of mismanagement regarding the institutions of the EU.

- The Council of the European Union, which represents the national governments, is the voice of the Member States. Formerly known as the Council of Ministers, it is the EU's main decision-making body. It shares with the Parliament the task of adopting the legislative regulations of the EU. Furthermore, it is responsible for the foreign policy, security and defence of the EU, as well as for the key decisions regarding justice and freedom. The Council is comprised of the Ministers of the national governments of all Members States. Its meetings are attended by the Ministers competent for the issues on the agenda: The Foreign Ministers, the Ministers of Economy and Finance, etc., as the case may be. Every six months, a different Member State assumes the so called presidency of the EU, i.e. it chairs all the meetings of the Council and sets the general political guidelines. Each country is entitled, within the Council, to a number of votes which approximately reflects the size of its population, weighed, however, in favour of the smaller countries. Most of the decisions are taken by simple majority, even though, for sensitive issues in sectors such as taxation, asylum and immigration policy or foreign policy, the unanimous consent is required. The Presidents and/or the Prime Ministers of the Members States meet several times each year within the scope of the European Council. It is during these 'summits' that the general guidelines of the EU policy are set.

- The European Commission upholds the common European interest. It is the executive body of the EU, and represents and defends the interests of Europe in its entirety. The European Commission prepares the proposals for new European regulations, which are submitted to the European Parliament and to the Council; it manages the daily work for the implementation of the EU policies and the granting of funds; it supervises the compliance with European laws and Treaties and it may proceed against those who violate the rules thereof, reporting them, if necessary, to the Court of Justice. The Commission is comprised of 27 persons, one for each Member State, supported by approximately 24,000 European officers, the majority of whom work in Brussels. The President of the Commission is selected by the governments of the Union and is confirmed by the European Parliament. The other Commissioners are appointed by the respective national governments in consultation with the designated President, and must be confirmed by the Parliament. They do not represent the governments of the home countries and each one of them is responsible for one specific political sector. The President and the members of the Commission are appointed for a period of five years, which coincides with the European Parliament's term of office.

Becoming a Member of the Union

Since it was created by the six founder countries over 50 years ago, the European Union has attracted a constant flow of new members up to the historical enlargements in 2004 and 2007, which brought the number of the Member States from 15 to 27.

All European countries may become members of the EU, provided they have a stable democratic system which guarantees the Rule of Law, the respect of human rights and the protection of minorities, but also an efficient market economy and a public administration capable of applying the Community legislation (the so called Community *acquis*).

Croatia, Iceland, the Former Yugoslavian Republic of Macedonia, Montenegro and Turkey are currently candidates to become members of the Union. The European Union provides economic and practical assistance to candidate countries to help prepare for membership. Ten years or more may lapse from the moment in which a country applies to become a member of the Union and the moment when it actually becomes a member, after the negotiations on the different chapters of the *acquis* have all been concluded with the satisfaction of all parties involved. After the conclusion of the negotiations, the Treaty of Accession is approved and executed.

At this stage, the candidate country becomes an 'Acceding State' and may benefit from a set of temporary rights prior to becoming a Member State of the EU. It acquires the status of 'active observer' within the bodies and agencies of the Union, with right of expression but without voting right. At the end of the ratification process carried out by the European Parliament and the national parliaments of the candidate state and of all Member States, the Treaty of Accession enters into force and the Acceding State becomes a Member State of the European Union for all purposes and effects. The Treaty of Lisbon introduces a clause for the voluntary withdrawal, which represents a fundamental innovation. The withdrawal may take place in any moment, is not subject to any review of the Constitution nor to any other conditions and may come into effect also without the express consent of the Union. A State that has withdrawn from the Union may become a member of the Union again by following the regular accession process.

THE EUROPEAN ECONOMIC AREA: What Is It?

The Agreement on the European Economic Area (EEA) was signed in May 1992 and came into force on 1 January 1994 between the 12 Member States of the European Community and the 6 States then

members of the EFTA (European Free Trade Association): Austria, Finland, Iceland, Norway, Sweden (Switzerland took part in the negotiations of the Agreement but, following the negative outcome of a popular referendum held in December 1992, did not ratify it). Since then, three of the original members of the EFTA (Austria, Finland and Sweden) have become Member States of the EU; Liechtenstein has officially entered the EEA on 9 April 1995. The purpose of the Agreement is to create between its parties a single internal market, usually referred to as the 'Internal Market', without any obligation for the EFTA countries to become members of the Union. In 2009, Iceland has formally applied to become a member of the European Union and officially started the negotiations in July 2010.

Within the Community legal structure, the EEA represents an association agreement between the EU and the EFTA countries. It covers almost entirely the laws concerning the Internal Market, which constitutes approximately 70% of the Community *acquis*.

The core of the agreement is represented by the 4 freedoms of the Single Market: Free movement of goods, services, capital and persons, as well as common competition rules. In addition, the Agreement provides for some 'flanking and horizontal policies' of the Single market, which are aimed at strengthening the Internal Market itself, thus establishing cooperation in other important areas such as research and development, statistics, education, social policies, environment, consumer protection, tourism, small and medium enterprises, culture, information systems and the audiovisual sector. The EEA-EFTA States participate in the Community programmes related to such sectors and express their opinion within the committees appointed to prepare the implementation of the programmes. The Agreement guarantees equal rights and obligations and is based on the principles of mutual recognition and equal treatment in the Internal Market for all the citizens and economic operators of the EEA.

The EEA Agreement does not cover the following:

- Common Agriculture and Fisheries Policies;
- Customs Union;
- Common Commercial Policy;
- Tax Policy;
- Common Foreign and Security Policy;
- Justice and Home Affairs (even though the EFTA countries are part of the Schengen area);
- Monetary Union (thus EFTA States do not adopt the Euro).

How Does It Work?

The institutional framework of the EEA is based on two pillars: The EU and its institutions form the first pillar; the EEA-EFTA States and their institutions form the second pillar. Common EEA bodies have been established as between these two pillars, which make it possible for the Members States to participate in the implementation and development of the Agreement. They are: EEA Council (comprised of the EU and EEA Ministers, + the Presidency of the Council of the European Union), EEA Joint Committee (European Commission and Ambassadors of the EEA-EFTA States), EEA Joint Parliamentary Committee (EFTA and EU Members of Parliament), EEA Advisory Committee (EFTA Secretary and Secretary of the Economic and Social Committee), EFTA Court. This institutional structure must ensure the functioning and the good development of the EEA overall.

Whenever a European act related to the Internal Market is adopted or amended, the Contracting Parties assess its relevance for the EEA with the purpose of including this new act in the relevant annex of the EEA Agreement. The EEA-EFTA States may request to negotiate some adjustments by means of a decision of the EU-EEA Joint Committee.

The EEA-EFTA States have no voting right within the institutions of the European Union. Nevertheless, the experts of the EEA-EFTA States are entitled to attend 570 different EU committees, as well as the EFTA Working Groups, where the drafts of any European regulatory act submitted by the Commission are reviewed. This way, they have the opportunity to learn in advance about the decision making and legal processes of the EU and to express their remarks on the regulations which shall be adopted.

The citizens and entities of the EEA-EFTA States are entitled to participate in many Community Programmes (such as the Seventh Framework Programme for Research and Development or the Long-Life Learning Programme), for which the disbursement of financial contributions is required, in addition to the annual budget required for participating in the EEA. The EEA-EFTA States also take part in a number of European agencies and institutions, including the European Food Safety Authority, the European Institute for Innovation and Technology, the European Environment Agency and others (please refer to the fact sheet on the budget of the Union and of the EEA).

To Become a Member of the European Economic Area

Given that this is an international agreement entered into by the European Union on one side and by the EFTA Member States on the other side, the accession to the EEA is currently possible only for those countries which are members of either the EU or the EFTA. The enlargement of the EU over the years has obviously enlarged also the EEA, which is now comprised of 30 different European countries. As a matter of fact, all the countries which become members of the EU must also apply to become Contracting Parties of the EEA Agreement. This procedure has been adopted through the EEA Enlargement Agreement, which came into force simultaneously with the Treaties of Accession of the candidate countries on 1 May 2004. The accession to the EEA, however, is not supported by any loans nor by any administrative cooperation and technical assistance programmes.

Up to now, the option to become a member of the EEA without previously becoming a member of the EFTA has never occurred. Indeed, Liechtenstein too had been a consolidated member of the EFTA prior to applying to become a Member State of the EEA. The possibility that the European Institutions might explore alternative options may not be ruled out.

TECHNICAL HARMONISATION: WHAT IS THERE TO KNOW?

The general principle of free movement of goods implies that products may be freely sold within the Union. Therefore, a European single market without any internal borders provides for the prohibition of unjustified quantitative restrictions between the Member States as regards import and export alike, as well as the prohibition of any measures which have an effect similar to that of the quantitative restrictions. However, there is the opportunity to implement prohibitions or restrictions which are grounded on reasons of public morality, public policy, public security, protection of the health and life of persons and animals or protection of the national natural, artistic, historical or archaeological heritage, or on protection of industrial and commercial property rights, provided that such prohibitions are proportioned and do not represent a means of unjustified discrimination or a concealed trade restriction. This implies the abolition of technical barriers and the compliance with the principle of mutual recognition.

As regards the trading of products between Member States, the principle of *mutual recognition* applies. According to this principle a Member State may not deny access to its market to any goods which have been legally manufactured or sold in another Member State and which are not subject to the Community harmonisation.

Mutual recognition entails the *assumption of conformity* of the products: National authorities are required to assume that any products manufactured according to the harmonised regulations are in compliance with the fundamental principles of the European directives, provided however that the competent national authorities supervise the safety of the products on their territory. This principle is also incorporated in the Agreement on the European Economic Area.

Therefore, the principle of mutual recognition between Member States applies to any product categories whose features are not harmonised at an European level. Other categories, on the contrary, are provided with an harmonised regulatory framework. This harmonised regulatory framework is partly based on the 'old approach', which imposes the harmonisation of clear product technicalspecifications and the implementation of common rules, i.e. the *standardization.* Technical specifications are agreed based on consolidated principles within the scope of the legally recognised European standardization bodies: CEN (European Committee for Standardization), CENELEC (European Committee for Electrotechnical Standardization) and ETSI (European Telecommunications Standards Institute). On the other hand, it is partly based on the 'new approach', which imposes the harmonization of any essential requirements of the products, i.e. the *technical harmonization.*

Both types of harmonization require that the products be marked 'CE' (European Conformity) which represents the declaration of the manufacturer about the fact that the products have been made in compliance with national laws which implement the relevant European directives.

A significant part of the EEA Agreement is related to the free movement of goods. The general principle requires that goods should freely circulate amongst the 30 Member States of the EEA without any customs duties and with no further impediments caused by national regulations, but free movement is limited to non-agricultural products. Products must comply with the requirements adopted by the EU and incorporated in the EEA Agreement, which protect legitimate interests such as health, consumer's safety and environment. Therefore, EEA States adopt the European harmonised standards and, absent any particular requirements set at a Community level, the principle of the mutual recognition of national rules applies. In the EEA, for instance, both the old and the new approach have been applied,

where the new approach is supported by the Harmonised European Standards and is based on the CE marking.

WHERE ARE WE?

Due to its legal position as non-member country, San Marino has not deemed it necessary until now to transpose the EC Directives on the minimal requirements and on the technical specifications for the harmonisation of products. Therefore, it is not possible to extend the principle of mutual recognition to the products of San Marino - except for the veterinary and zootechnical sector, which are harmonised thanks to the accession to the CITES[1] Convention and the implementation of the relevant Community *acquis*.

There is no national framework regulation which incorporates the European principles as regards technical harmonisation and safety of products. This causes uncertain operations for the enterprises of San Marino, since, in compliance with the Community principles and provisions on the responsibility of the manufacturer and on the protection of consumers, they are required to respect the technical rules set by the EU in order to have access to the European markets and, consequently, to affix the CE mark. To do this, they often autonomously accept to produce in compliance with European standards and procedures, or try to solve the problem by appointing an agent incorporated in the EU with which the technical documentation of the San Marino manufacturer is deposited, or they might avail themselves of entities external to the enterprise for conformity assessment purposes.

The enterprises autonomously adjust to the applicable regulations in the country they export to, or avail themselves of specific experts identified from time to time. In any case, internal regulatory deficiencies weaken the possibility for the products of San Marino to have access to the European markets, since there is no mutual recognition of the standards and certifications used (SOA, certificates of origins, quality certificates).

In the contexts where there is no technical harmonisation at a Community level, whilst the principle of mutual recognition applies in the EU, the legislative gap of San Marino is even more penalising, given that the companies of San Marino have no national rules to refer to, nor can they invoke the principle of mutual recognition. The goods are often subject to additional preliminary checks compared with the checks performed on Community goods, just because the recognition of the type of tests carried out by the companies of San Marino on their products is not guaranteed.

There is no structure (such as, for instance, a legal department) in charge of following the evolution of the Community regulations as far as goods are concerned and which would then be able to arrange any actions required for the adjustment to the provisions issued by the European Union in each specific sector. There is no control structure and no penalty system. Finally, there is not a qualified structure for the assessment of the conformity of the products. Therefore, it would be appropriate to implement an internal system capable of rapidly implementing the evolution of the regulations, by using, for example, the instrument of the legislative decree.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

Beside the mandatory implementation of the relevant Community *acquis*, with the relevant possible negotiable extensions, the following would also be required:

- An internal regulatory effort, as required by the implementation of the existing European directives and regulations governing the technical harmonisation.

[1] Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973.

- Protecting the capability to constantly update national laws based on the regulatory actions developed by the EU and updating the technical specifications of products and standards arranged by the European standardization bodies.

- Establishing legislative frameworks in charge of control, management and sanctions.

- The modernisation of the Public Administration through the creation or the reorganisation of structures capable of following the evolution of the Community regulations, carrying out the conformity assessment on the products, effectively supervising the market and controlling the goods. The foregoing entails investments in the training of suitable human resources entitled to carry out these tasks.

What would the **implications** be?

- The economic operators and the companies of San Marino could work within a framework characterised by higher legal certainty, thus avoiding using temporary solutions which offset the current lack of regulations in most of the product sectors of San Marino production only to a certain extent.

- A continuous implementation of the European provisions regarding the technical harmonisation should be initiated, so as to make it possible for the enterprises to refer to a regulatory corpus which is continuously updated.

- The mutual recognition of San Marino goods would be ensured and the goods would then be able to circulate and be sold freely just like those of the European Union.

- It would be possible to establish our own national certification and conformity assessment bodies, with the consequent opening of new business opportunity, or - should this prove impossible due to lack of human and structural resources - it would be possible in any case to appoint an agent of another Member State and benefit from the relevant administrative cooperation.

- It would be possible to participate in the European standardization bodies (CEN and CENELEC) with our own experts.

- The procedures for the marking of the products would be simpler also because they would be supported by the technical assistance provided by the European standardization structures.

Towards the European Economic Area

Both the possibilities of San Marino becoming a member of the European Economic Area and/or of the European Union require the implementation of the European provisions related to the technical harmonisation and they would have similar implications.

Improving What We Are

In the event that it is decided to maintain our status as non-member country, this would entail several tasks aimed at improving the current situation:

- First of all, it would be necessary to prepare a national framework regulation and to create legislative frameworks for control and sanctions, in order to fill in the legislative gap through the voluntary implementation - in the San Marino product categories which are not regulated yet - of the key conformity requirements, technical and production specifications and standards set in the European regulations. For this purpose, an adequate structure should be created, capable of carrying out and managing this implementation.

- Secondly, it would be necessary to create a structure in charge of the surveillance of the market and of the control on the products, which should act based on the standards adopted. Or, absent any autonomous structures, it would be necessary to enter into cooperation agreements with external structures such as, for instance, the Italian entities authorised to assess the conformity of the products and accredited to the European standardization bodies.

The status of San Marino as non-member country could also be enhanced by following other procedures, which do not require the accession to the EU nor to the EEA:

- The first solution consists in the enhancement of the existing Agreement on Cooperation and Customs Union, by calling a meeting of the Cooperation Committee and issuing a decision in which the rules that San Marino must adopt as regards the technical conformity of the products are specified. Based on article 19 of the Agreement, it would be possible to extend the cooperation to the industrial production and to the placing of goods from San Marino on the EU market, abolishing the advance payment of the VAT. It would also be possible to apply for accession to the INTRASTAT system. In addition, based on the Declarations enclosed hereto, including that by which the Community declares its availability to carry out a review, any issues concerning the technical conformity of the products could be addressed by the Cooperation Committee.

- The second solution consists in the execution of a specific bilateral agreement with the European Union as regards mutual recognition, although the success of this initiative depends on whether the European Union is willing to enter into an agreement of this kind, and currently this does not seem to be the case**.** In any case, even if it is decided to reach a bilateral agreement with the European Union or with the EEA countries, a legislative framework harmonised with the EU regulations should be implemented. Furthermore, this implementation is unavoidable even with regard to only the placing into the EU market of San Marino goods, which must meet the marketing requirements imposed by the importing country, i.e. the EU.

As regards the control of the goods, it is worth noting that, while for the assessment of conformity for the purpose of CE marking San Marino could avail itself of private external entities which would be entrusted to carry out this task on its behalf, the public control on the compliance with the criteria for entering the market and for the monitoring of the market might remain the competence of the State. The foregoing could lead to new business opportunities, such as the opening of private laboratories for the certification of goods or the opening of a branch of Italian Institutes, something which at the moment would not be possible, since the entity would not be accredited to the European bodies.

This would bring several benefits: The guarantee of a certain legal framework which would facilitate the operations of the enterprises and a higher protection of the competitiveness of San Marino goods; the possibility to have national structures accredited for the control of the products; participation to the administrative cooperation amongst the entities in charge of assessing the conformity of the goods and the certification thereof. In general, the companies of San Marino might take advantage of more business opportunities.

CUSTOMS UNION: WHAT IS THERE TO KNOW?

The European Union is a customs union and the pillar which the European Single Market is based on. This union extends to the trade of goods and provides for the prohibition to impose, as between Member States, any customs duties on the import and export, or any other similar tax, the prohibition to impose any customs duties of a tax nature, and the adoption of a common customs tariff within the

scope of the relations with non-member countries. The provisions apply to the original products of the Member States and to the products coming from non-member countries which are released for free circulation in the Member States, or for which the import formalities have been fulfilled and customs duties and similar taxes paid.

The main initiatives taken by the European Union in order to pursue the purposes connected to the customs union are the following:

- Updating of customs rules and procedures through the preparation of a Modernised Customs Code.
- Enhancement of the security and protection standards of the international supply chain which includes the adoption of an approach to the Common Risk Management, the creation of the Authorised Economic Operators (AEO) category, which allows a set of customs simplifications, and the implementation of information systems on the transit of goods prior to their import within the EU or export from the EU (NCTS).
- Complete computerisation of customs procedures in order to increase the efficiency thereof, through the establishment of *E-Customs*.

The *acquis* of the customs union includes the Community Customs Code and the provisions for the implementation thereof; the Combined Nomenclature; the common customs tariff and the provisions governing tariff classification (TARIC); the common procedures related to Community Transit; the mutual administrative support as regards customs controls and transit of goods.

Unlike the EU, EFTA Member States - with the exception of Switzerland - established a free trade area with the EU by entering the Agreement on the European Economic Area.

EFTA - EEA	EU
A free trade area is comprised of the following elements: - Free movement of goods, limited to non-agricultural products; the EEA arranges for a preferential trading as regards processed agricultural products. - Common internal trade policy: The free movement of goods as between Member States is limited to products which originate in the EEA. - Different external trade policies: Each state maintains the authority to regulate its trading with non-member countries. - The existence of different trade policies leads to the definition of rules of origin which make the free movement of goods more difficult, especially due to the fact that customs borders remain in place.	A customs union is comprised of the following elements: - Complete free movement of goods, extended also to agricultural products. - Common internal trade policy: Free movement of goods as between Member States. - Common external trade policy: The Member States have a common policy as regards non-member countries. - Products may freely circulate once they are released for free circulation within the territory of the EU, regardless of their origin. Note: The Agreement on Cooperation and Customs Union is a customs union between San Marino and the EU.

Source: Analysis by the Department of Foreign Affairs

WHERE ARE WE?

The Agreement on Cooperation and Customs Union establishes a customs union between the European Economic Community (now EU) and the Republic of San Marino. This implies the following:

- The abolition of customs duties on both imports and exports and of any similar taxes as between San Marino and the EU.
- San Marino undertakes to apply the ordinary customs tariff to the goods coming from non-member countries and to apply the provisions of the common trade policy, as well as the community regulations concerning movements of agricultural products and veterinary, plant health and qualitative issues.
- The prohibition of any internal tax measures or practices which would directly or indirectly represent a discrimination between the products of the contracting parties. Furthermore, quantitative restrictions are prohibited.
- That the Republic of San Marino authorises the EU to carry out customs clearance formalities for and on behalf of the Republic, in particular with regard to the release for free circulation of products coming from non-members countries and directed to San Marino. San Marino, however, may reserve to exercise its right to carry out customs clearance formalities, or it may decide to establish its own customs office.

- Within the scope of the trade agreements entered into with non-member countries, the EU usually negotiates the inclusion of a declaration which provides for the assimilation of the products of San Marino to those of the EU.

In light of the fact that the customs clearance formalities are currently carried out through the customs offices of the European Union, the EU-San Marino Cooperation Committee has clarified in the so called 'Omnibus' Decision dated March 2010 that the Republic of San Marino applies the customs laws of the European Union as these are applied in the EU; specifically, the Community Customs Code and its application provisions are fully applied. Furthermore, the Republic of San Marino applies the laws of the European Union related to the international trade in endangered species of wild fauna and flora, to which regard the customs territory of the Union and the territory of the Republic of San Marino are considered as a single customs territory. San Marino also participates in the NCTS programme since 9 April 2009. On the contrary, it has not adopted the AEO system yet.

In general, therefore, the existing customs union with the EU is beneficial for San Marino because it applies the same free trade regime applied to the goods of the EU also to the goods of San Marino and, as regards trade relations with non-EU countries, it allows to benefit from the preferential agreements existing within the EU. However, there are some critical issues.

The absence of any customs office in San Marino and the consequent dependence on the EU for the carrying out of the customs clearance formalities proved to be prejudicial given that the Agreement on Customs Union currently in force is sometime applied in a partial or incorrect manner by the competent customs officers. In some cases even the validity of the quality certificates, control tests and certificates of origins of San Marino goods is unduly challenged.

Some difficulties in the circulation of goods result from the fact that the health authorities are not accredited to carry out the necessary controls and to release the customs authorisations for the goods directed to San Marino.

Within the Public Administration there are no resources specifically dedicated to the cooperation with the economic operators and the carriers to solve the problems which might hinder the activities of the enterprises.

From an administrative-bureaucratic perspective, some difficulties related to trading with the EU remain as regards the discharge of the T2 customs documents and the advance payment of the VAT, whereas in trading with the non-EU countries there is a duplication of customs formalities, since in addition to the import procedures there are also the transit procedures of the Italian customs for goods entering San Marino.

For the economic operators of San Marino it would also be useful to adopt the AEO system, given that this customs certification would certify the reliability and safety of the distribution and commercial chain, as well as the security of the financial and administrative management profiles.

Some problems still remain also as regards the recognition of the certifications of origin. For this purpose, it is necessary to give more emphasis to the fact that the goods from San Marino have been granted the qualification of 'EU goods' as regards the origins of the goods by quoting the relevant law, so that it could be verified by the State where the goods are to be received.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

In practice, by becoming a member of the European Union, the current customs union would continue to exist, but the agreement would obviously be obsolete because of the complete accession to the EU, with the subsequent implementation of all Community regulations on this issue. Furthermore, this would lead to:

- The achievement of total conformity with the EU customs procedures.
- The possibility to have access to all the electronic Community programmes, although it is necessary to previously bear the burden of the internal implementation.
- The unquestionable EU origin of San Marino goods.
- The allocation to the EU of 75% of the duties collected for financing the EU budget, whereas only 25% will be retained as refund for administrative expenses (currently, 25% of the duties is allocated to the EU as refund of administrative expenses related to customs procedures, while the balance is retained to finance San Marino budget). In any case, it should be considered that the income resulting from the collection of the duties is decreasing, since the rates applied to non-EU goods subject to customs duties are reduced by virtue of the free trade agreements being entered by the EU with its major trading partners.
- From a bureaucratic-administrative perspective, the trading with the EU would be completely free of any customs requirements: T2 customs documents would no longer be necessary but it would be sufficient to produce the NCTS communicatons, as is, in part, the case today.
- The possibility to adopt the AEO system, as provided for in the Modernised Customs Code, which would simplify security customs controls. However, it would be necessary to create the structures required to assess which operators have the characteristics required for the release of the AEO certification.
- The possibility to adopt the approved exporter certification system. This allows to certify the origin of the goods directly on the invoice, without any intervention from the customs for obtaining the certification required, in order to be able to benefit from more favourable excise treatment. Even in this case, an audit on the operators who apply for certification must be carried out.

Towards the European Economic Area

The option for the accession to the EEA, which ensures a common market within a free trade area without being a customs union, would worsen the current situation of San Marino in the event that it implies the termination of the Customs Union with the EU.

Indeed, it would entail:

- The need to re-introduce customs documents and procedures for trading with the EU which are more complex and burdensome than the current ones.
- The withdrawal from the common external tariff and the application of the common trade policy of the EU.
- The need, thus, to enter into free trade agreements as concluded by the EFTA with other non-EU countries.

- Products imported from non-EU countries could not freely circulate given that, should they be re-exported to the EU territory, they would again be subject to excise duties in the recipient State.

On this issue, it is the opinion of the Group that the EEA option should be taken into consideration only in the event that the customs union may be maintained.

From a strictly technical and legal perspective, and provided that the Member States give their political consent during the negotiations, the customs union of San Marino with the EU would not be incompatible with the fact that San Marino is a member of the free trade area established by the EEA countries. However, within the scope of the Agreement on Customs Union San Marino would not be free to enter into any free trade agreements with countries that are not members of the EU, but it would continue to be subject to the trade policy of the European Union. If the existing customs union could coexist with the possible membership of the EEA, the competent legal offices of the EFTA and the EU should define the procedures for such coexistence. By the same token, San Marino should internally define a negotiating position that clarifies its interests and conditions.

Improving What We Are

Should we continue to have the status of non-member country, the possibility to create our own customs body is not to be dismissed. To this regard, the authorised carriers of the Republic of San Marino have already prepared a project, in the believe that the undertaking of customs issues by the Authorities of San Marino would lead to short term solutions for the problems encountered.

What would the **implications** be?

- The total availability of the excise duties for San Marino. The contribution as refund of administrative costs, currently retained by the customs offices in charge of the customs clearance of the goods coming from non-member countries and directed to the Republic of San Marino (25% of the excise duty) would be collected by the customs of San Marino. This amount, however, would have to be used to finance the operations of the customs. Given that any costs for customs controls must be borne by the economic operator, the creation of a new customs body would not involve any further increase in costs for the State.

- The abolition of certain bureaucratic barriers with regard to the EU customs.

- Compared with the AEO, the relevant provisions may already be applied, subject to the prior agreement on the mutual recognition of AEO certification. In any case, it would be necessary to create governmental structures which would carry out the required assessments on the companies, except if San Marino reaches an agreement with other EU authorities for the release of the AEO certificate to the operators of San Marino on behalf of San Marino. The issue of adopting the approved exporter certification should be discussed by the Cooperation Committee, which could provide, through its own decision, for the implementation of the relevant regulations, thus confirming the possibility to release such certificate to the economic operators of San Marino.

- The achievement of a position equal to that of the EU as regards the control of the goods and the certification thereof.

- The reduction of corporate costs for customs import and export formalities. The operator in San Marino would have the advantage to perform only one customs transaction, thus halving times and costs related to the customs stop and warehousing.

- However, this possibility would entail the creation of adequate structures (such as customs warehouses), the training of appropriate staff and the accrediting of adequate laboratories for the control of goods (although the country still has the possibility to avail itself of any laboratories on the territory of the EU accredited at a European level). In general, adequate resources should be allocated to the Public Administration and a proactive cooperation should be initiated as between the authorities (Tax Office), economic operators and carriers.

- From a technical and training perspective, the staff of the Tax Office and the authorised carriers would be able to face the creation of a San Marino customs body without any excessive burdens given that steps forward have already been made since San Marino adopted the NCTS system. Since then, sub-customs sections have been established at each authorised carrier's premises, which are in charge of performing many customs procedures and which, therefore, function, at a Community level, as a customs body of the Republic of San Marino.

FREEDOM OF ESTABLISHMENT AND FREE MOVEMENT OF SERVICES

WHAT IS THERE TO KNOW?

In order to benefit from the opportunities of an internal common market of services without any barriers, the European Union intends to guarantee to the business of self employed people (commercial, industrial, craft or free-lance professionals) the freedom of exercising their activities within the entire territory of the European Union, in terms of both freedom of establishment and free provision of services in a Member State other than their own, without being obliged to take up residence therein, in order to achieve the best economic localisation possible.

Freedom of establishment is about the right of the citizens of a Member State to carry out their self-employed activities in a continuous and permanent manner within the territory of a different Member State, where they 'permanently' locate their production activities. The same also applies to the companies that wish to establish in a Member State.

The free provision of services makes it possible for self-employed people and companies to offer their services in other Member States at the same conditions applicable to the companies and professionals of that Member State, temporarily and without being required to create any agencies, subsidiaries or branches in such other Member States.

The direct application of the two freedoms implies that each Member State must allow the citizens of other Member States to establish in, or provide their services within, its territory according to the same conditions which apply to its own citizens. Every discrimination based on nationality is thus forbidden.

Although the Member State continue to maintain national conditions applicable to the access to, and exercise of, professions by means, for instance, of legislative restrictions imposed to foreign citizens, the European Union provides for some Community measures designed at 'facilitating the exercise' of the two freedoms: The mutual recognition of the national regulations and their possible harmonisation, especially as regards the recognition of degrees and diplomas.

In the health sector, harmonisation was not difficult to achieve. Most of the professions linked to the health sector (doctors, dentists, nurses, veterinaries, midwives, chemists) benefit from the complete mutual recognition of their national degrees for accessing and exercising their professions, meaning that such degrees, listed in the Community Directives, make it possible to exercise their activities in all countries of the European Union, within the scope of both a permanent establishment and the provision of services.

As regards other professions (lawyers, carriers, insurance agents and brokers, hairdressers, architects, self-employed commercial agents), the major differences existing between the various national regulations made it impossible to achieve the harmonisation and, as a consequence, the mutual recognition is less significant. The persistence of difficulties led to the implementation of a system for the general recognition of the equivalence of higher education diplomas - based on the level - valid for all regulated professions which are not subject to a specific Community law. According to this system, which was created in different times during the '90s of the 20th Century, the host State may not deny access to the activity in question if the applicant is qualified to get such access in its country of origin[2].

The provisions of the European Union exclude the freedom of establishment and the free provision of services in case of activities related to the exercise of the official authority.

[2] Nevertheless, if the applicant received a lower-level education, the host State may request an additional professional experience for a certain period. Should the education be very different than required, the host State may require an adaptation period or an aptitude test, at the option of the applicant, except if the activity requires knowing the national laws.

These provisions are fully applicable to the Member States of the Agreement on the European Economic Area. That is to say that in the entire EEA the freedom of establishment and the free provision of services apply, as regards both commercial and professional services.

a) FREEDOM OF ESTABLISHMENT FOR COMPANIES

WHERE ARE WE?

Despite the fact that, compared with the past, some openings in compliance with the provisions of the EU laws occurred by means of the approval of new measures regarding the release of industrial, craft and commercial licenses, the system of San Marino is still characterised, to this regard, by some features of a protectionist nature. The new regulations provide, inter alia, for the possession of integrity requirements for those who intend to open an enterprise in San Marino. The automatism provided for by the Community laws as regards the establishment of the companies is not envisaged, nor is the incorporation of sole proprietorships by non resident persons, except for those already established[3]. The law currently in force (article 7 of Law 129/2010) provides for the residence requirement in order to obtain the individual license. Therefore, an 'authorisation' system still applies in San Marino. Other elements of potential non conformity are related to the current authorisation system for the purchase of real estate properties by foreign persons, the integrity requirements for those who intend to incorporate an enterprise in San Marino - which do not exist in other countries - and the residence requirement necessary to obtain an individual license (art. 7 of Law 129/2010), with the consequent denial to grant any licenses to individuals who are not resident. A foreign company may open a permanent establishment in San Marino even if it is 100% foreign owned, according to the provisions of the Law 129/2010.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

Subject to the possibility granted to each Country to negotiate specific exemptions, whose content will only be clarified during the negotiations with the European Union, there would be:

- The simplification and harmonisation of the legislative framework of San Marino compared with the European laws as a prerequisite, aimed at guaranteeing to the non resident person the possibility to apply for an individual license and to benefit from reciprocal treatment. Such measures should accompany provisions aimed at ensuring the control on procedures, the support requested by the persons in question in order to face ongoing problems and the cooperation between the competent authorities.

- The review of the current authorisation regimes and administrative and political filters related to the licensing of Community companies which decide to establish in San Marino and which would benefit from reciprocal treatment.

- The need to make the investment in the Republic attractive, due to the competitive pressure resulting from the opening to the European market.

- Any problems for the allocation of tax competences as between the States (including the application of the concept of 'permanent establishment') could come under the EU principles currently in force as regards direct taxation, even though this would still be subject to the signing of agreements against double taxation.

[3] The only possibility for a non resident to obtain a license is to incorporate a company established under the laws of San Marino. Thanks to the new Trade Act, non resident persons who intend to establish a company under the laws of San Marino in the territory thereof are waiting for the application addressed to the Office of Industry to be transmitted to the Committee established in accordance with the provisions of article 21 of Law 130/2010, which will consider the application (this, however, implies the corporation of a company under the laws of San Marino).

What would the **implications** be?

- Improvement in the operations of San Marino companies that intend to establish in another country to offer their services. As a matter of fact, they would be able to benefit from greater legal certainty in the presentation of their services and of the activities carried out, with the simultaneous simplification of the bureaucratic procedures.
- The country and its entrepreneurs would also be included in the network of European companies.
- Finally, the harmonisation of the system would create favourable conditions for investments.
- The country might face increased competition from European companies on the operators that only address the domestic market, as well as an opening of the market which might produce uncontrollable consequences.
- The implementation of many regulatory acts would have an inevitable impact on the current structure of the public administration.
- Any tax impediments would be solved by entering into agreements against double taxation.

Towards the European Economic Area

Same conclusions may be reached in the event that the Country decides to become a member of the EEA, which adopts the same provisions on this matter.

Improving What We Are

In order to change from the current status of non-member country without accessing either the EU or the EEA, the country could enter into bilateral agreements with the countries of the EU on social and tax issues, with reference to mutual recognition and avoidance of double taxation. The Country might also voluntarily implement the European provisions in its legal system and create for this purpose specific offices in charge of the regulatory simplification and the assistance to the enterprises.

b) FREE PROVISION OF CROSS-BORDER SERVICES AND RECOGNITION OF DEGREES AND QUALIFICATIONS

WHERE ARE WE?

As regards the provision of cross-border services in Italy and in the European context, the artisans and professionals of the Republic (lawyers, surveyors, accountants, industrial technicians, commercial accountants, geologists, engineers and architects, psychologists) face several problems linked to the recognition of qualifications and degrees and to the provision of services to individuals in a mutual recognition regime[4].

[4] Nevertheless, the Working Group briefly reviewed the problems encountered by San Marino companies when they provide services in Italy on a temporary basis. Some participants mentioned the fact that a plant engineering company of San Marino which operates in Italy is required to open a permanent establishment in order to conduct its activities in Italy, with all the consequences in terms of difficulty in being recognised. From an entrepreneurial perspective, the companies of San Marino apparently do not encounter any problems in operating and providing services in Italy. Where it comes to small enterprises, on the contrary, which provide their services in Italy, in light of the differences between Italian regulations and those of San Marino

In most cases, the professionals contacted raised the issue of the difficulty in operating under conditions of reciprocity - particularly in Italy, due to the proximity of the territories – and of the difficulty related to the authorisation to practise the profession due to the non recognition of San Marino qualifications and the lack of any specific agreements on this issue.

In general, the critical issues encountered by the operators of San Marino as regards cross-border provision of services may be attributed to the fact that there is no equal recognition of the training periods, of the course and of the exam carried out in San Marino for getting the authorisation to practise the profession. They also noted that there is no reciprocal treatment.

Italians already work and provide services in San Marino if there are no other entities in the territory of San Marino active in certain types of work (these are rules unilaterally adopted by San Marino since the Agreement with Italy does not contain them), whereas the operators of San Marino are required to get a VAT number in order to be able to operate. Sometimes they are also required to register with Italian Associations or trade registers and to adopt administrative practices which often result in arbitrary or protectionist requests. Such a situation means reduced work opportunities as a result of the non automatic recognition of the professional qualifications.

As regards the recognition of university degrees, we can assume that there are no particular problems, since the majority of San Marino students attend courses in Italy. There is, however, one more difficulty as regards the authorisation to practise the profession. There are critical issues within the context of the recognition of diplomas, due to the inequalities of opportunity between San Marino students who decide to remain in the Republic and finish their Secondary studies here, and those who, instead, decide to go to Italy. In the first case there are no difficulties for the recognition of the degree itself, when the studies are continued in the Republic of Italy. If, on the contrary, the election is for a EU or non-EU country, the recognition is more difficult since there is no agreement in place either with the European Union or with individual States.

The University of the Republic of San Marino also faces similar problems. The degrees issued by the University are not recognised outside the territory. In order for them to be recognised, Agreements must be entered into with other foreign institutions, generally located in the Republic of Italy. These are formally those issuing the academic degree which is otherwise useless. As regards the offer of the University of the Republic of San Marino, this has a national dimension and the University is the managing entity but not the promoter of the courses. As for the citizens or non citizens of San Marino (whether from the EU or not) who apply for the recognition of a degree obtained in a EU or non-EU country other than Italy, with which - as mentioned above - the principle of mutual recognition applies, the bureaucratic path to follow is quite time consuming. For the citizens of San Marino, this means the non recognition of the degrees and education acquired outside San Marino, together with difficulties for the authorities of San Marino to recognise the degrees acquired in a European context and, for the citizens, to use them in a proper manner.

- **WHICH DIRECTION IS TO BE TAKEN?**

Towards the European Union

The accession to the European Union would facilitate the solution of the problems encountered by the professionals of San Marino. Specifically, as regards the free provision of services, this would entail:

- The need for a prior harmonisation of the laws with the European principles and acts. San Marino operators could avail themselves of a specific legal framework under which they may

as regards the professional requirements needed to carry out certain activities, the legislator of San Marino deemed it appropriate to regulate some sectors, such as that related to the safety standards of the plants, in order to facilitate the provision of services.

provide their services, with the simultaneous simplification of the bureaucratic procedures, higher certainty as regards rules which are to be complied with by everyone and an easier identification of taxable amounts and place where such tax is to be applied.

- The recognition of the degrees, qualifications, certificates of San Marino (or of the acts produced by professionals of San Marino); non-discrimination; the abolition of the authorisation regime for the access to, and practice of, the profession.
- The authorisation to operate independently within a Community context. Professionals would gain in independence.
- The enhancement of market perspectives and the increase in market opportunities, also thanks to higher investments focused on the domestic market.
- Increasing opportunities for job mobility.
- Some less positive elements may consist in possible impacts on the domestic labour market and in greater competition from abroad in the local market, since other operators and professionals from the EU could benefit from the opportunities offered by the European Single Market and by the chance to operate freely in our country, thus determining competitive pressures on the local market from the outside.

As regards the recognition of degrees and qualifications, this possibility would imply:

- Harmonising the training provision of San Marino with the European standards.
- Administrative cooperation between the entities in charge.
- Investing in the economic and human resources required for the participation to the European programmes and to the re-qualification of the University pending the necessary internal harmonisation.
- Identifying the entities responsible for the harmonisation of the curricula and teaching programmes and, therefore, integrating the courses and tuition offered and the degrees issued by the educational institutions of San Marino with those of the European Union.
- As for students, the simplification of the transition from study to work within the European context, an incentive to mobility, as well as more training opportunities (masters, PhD courses, etc.). For the young people of San Marino, this would entail the opportunity to apply for scholarships and to participate in competitions without any discriminations.
- For the economic and professional operators, this means more opportunities to operate on the European market under the same conditions and with a greater legal certainty, as well as the recognition of the qualifications and certificates of San Marino.
- The training and university offer of San Marino would achieve a more European dimension and the University of the Republic of San Marino would gain in terms of independence and transparency of the degrees. In addition, the citizens of San Marino would be able to know more about their skills and qualifications and to assess the value thereof.
- Mobility incentives for students, teachers and researchers of San Marino by virtue of the transparency and intelligibility of educational paths and degrees.

- Overall, the participation of the country to the European exchange programmes in order to foster the development of the national education institutes and their participation in the European research competitions.

- However, there are some less positive aspects. The recognition of the degrees and qualifications would determine the possibility, for foreign people applying for it, to have guaranteed direct access to the labour market of San Marino at the same conditions applicable to its citizens. Together with the abolition of the discrimination represented by the national citizenship (or by the residence), this could determine further pressures on the labour market of San Marino.

Towards the European Economic Area

Same conclusions may be reached in the event that the Country decides to become a member of the EEA, which adopts the same provisions on this matter.

Improving What We Are

As regards the offer of services within the European market, it would be possible to explore other possibilities which do not require the accession either to the European Union or to the EEA:

a. Enhancement of the existing Agreement on Cooperation. Based on the procedures provided for in the Agreement, the country would be required to voluntarily harmonise the system of San Marino to the European standards. The operators of San Marino would benefit in terms of efficiency and the country would be guaranteed mutual recognition of degrees and qualifications. The tax uncertainty would remain, unless a VAT system is adopted. Furthermore, the educational and training offer of San Marino would continue to be limited to a national level only, together with the persistence of the status as third party for the citizens and enterprises in San Marino, which would contribute to their exclusion from the European research competitions or project finance.

b. Entering bilateral agreements, through which annual guaranteed quotas for the citizens of San Marino are set as regards establishing in European countries with the purpose of carrying out a work activity, as well as the opportunity to regulate the important aspect of the tax treatment of services. Beside the likely positive aspects, i.e. guaranteed mutual recognition of degrees and qualifications and the impulse to the mobility in both the education and work sectors with a given state structure, it should also be noted that the Country would not be allowed to participate either in European research competitions or in European training and qualification programmes. In addition, the negotiation and ratification process of the agreement could prove quite time consuming.

c. entering into an agreement with the European Union similar to that with Switzerland as regards the free provision of services. The possible 'success' of this initiative, however, depends on the will of the European Union to negotiate this type of agreement with a small State, but at the moment the EU does not have such intention.

As regards the recognition of the degrees and qualifications, there are two possible solutions:

a. Enhancement of the existing Agreement on Cooperation. By referring to a Declaration included in the Agreement on Cooperation, the country could guarantee to its students the possibility to participate in the Erasmus programmes, in compliance with the Community procedures. This agreement would foster a greater mobility of the students within Europe, with the consequent

benefit of continuous training opportunities. Nonetheless, the existing national dimension of the education in San Marino would not change. It should also be borne in mind that, besides the required investments in economic resources to participate in the European programmes, Europe has in the meantime extended its range of opportunities regarding research and training programmes ancillary to the Erasmus programme.

b. Adoption of the Bologna Process. Recently, the Government of the Republic of San Marino decided to submit a formal application for the accession to the European Higher Education Area (Bologna Process). This is a path started by the European Union with the intent of promoting an harmonisation process of the different European higher education systems. The Bologna Process would guarantee the following to the country: The equivalence of the education qualifications, i.e. of the certificates and academic degrees of San Marino with those of the EU; the full recognition in all states that acceded the Bologna Process (currently 46 countries, since it includes countries which are not members of the EU); the chance to enhance the quality of the San Marino education system through the cooperation with other European institutions and thanks to the exchanges of best practices. This Process would guarantee to the citizens of San Marino 'transparency and clarity of the educational paths and education qualifications, together with a wide range of high quality knowledge, the mobility of students, teachers, researchers and administrative staff, the participation of students in the higher education *governance* processes'. For the country the Process would imply the duty to guarantee the recognition of the degree or qualification of a foreign citizen without being necessarily required to guarantee him/her the access to the internal labour market of San Marino, as is the case of the accession to the European Union and to the European Economic Area. The same Process would not guarantee to the citizens of San Marino the participation in the Erasmus programme and in other programmes. Overall, the recognition of the qualifications is not sufficient to facilitate the search for a job within the European Union by the citizens of San Marino, given that, to this regard, EU citizenship remains a discriminatory factor.

FREE MOVEMENT OF PERSONS

WHAT IS THERE TO KNOW?

The free movement of persons is a right sanctioned by the Charter of Fundamental Rights of the European Union, which states that 'Every citizen of the Union has the right to move and reside freely within the territory of the Member States.' Such freedom is of benefit to the citizens of the EU, the Member States and the European economic competitiveness.

This concept widened with time, from free movement of the individuals in their quality of economic operators, i.e. providers of labour or services, to the idea of an European citizenship, regardless of any labour activities and of any differences based on nationality. This principle also applies in the case of citizens of non member countries, which means that with the abolition of internal borders, citizenship will no longer be subject to verification.

Except for some restrictions expressly provided for by the European Union, all European citizens enjoy the following rights:

- To enter another Member State.
- To freely stay in another Member State and to take residence therein.
- To enjoy the same social benefits enjoyed by the citizens of a State, also as regards those who are lawfully residing in another Member State.

This way the European Union recognises the right to freedom of movement within the Union to all employees who are citizens of one of the Member States, specifying that such right implies 'the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'. The freedom so recognised implies the right to move within the territory of the Union in order to apply for jobs (to look for jobs, according to the clarifications provided by the Court) and, for this purpose, to take up residence in other Member States and remain there after work, although at certain conditions. Workers have the right to access an employment in any Member State other than their own. In addition, workers may not be treated less favourably than national workers (national treatment) and the Country of destination may not apply to the migrant workers rules that, even though they are applicable to all workers alike - including national workers - have the effect of hindering the exercise of the rights underlying the freedom of movement.
The family members who accompany the migrant worker of the EU may, regardless of their nationality, remain with him/her in the host country. Member States are further required to facilitate the entry and staying of dependent relatives or family members, or of those who require the personal assistance of the worker on serious health grounds, as well as of the partner with whom the worker has a stable, duly certified relationship.
The right to free movement of workers is complemented by a system for the coordination of social security systems. The Community guidelines for the coordination of national social security systems is based on three key principles: The aggregation of the migrant workers' insurance periods (aggregation and pro-rata liquidation), equal treatment and payment of the benefits by the State where the worker holds residence (principle of exportability).

According to the EEA Agreement, the citizens of the EEA States have the right to look for and obtain a job in all other Member States, in compliance with the Community principles implemented through the Agreement itself.

WHERE ARE WE?

The analysis of the Working Group focused on two key investigation lines: The flows of movements towards San Marino and the movements of San Marino citizens in Italy and Europe. As regards the first line of investigation, the legal framework of San Marino is not in line with the Community principles, but the dimension of the territory and the needs linked to the maintenance of the sovereignty and of the equilibrium in the labour market justify protectionist measures resulting from the Republic's long history and from the need to protect national identity by controlling the incoming flow of people. This explains, for instance, the strict regulation on residence permits, the impossibility to freely circulate for foreign people in search of a job (the foreign person who is not in possession of a certificate of no impediment for work may freely enter, circulate and stay in the territory for a period of no more than 20 days - whereas in Europe he/she is authorised to do so for the first three months - after which he/she must obtain a residence or cohabitation permit), the need to protect the labour market through the registration in the job seekers list, reserved to the citizens of San Marino and to foreign people resident therein. In addition, the laws of San Marino do not automatically grant the right to family reunification for the migrant workers and their families.

As regards the second investigation line, even though the citizens of San Marino may freely circulate within the European Union (students, trainees and workers) and are not prevented from accessing the labour market of the European Union, obtaining a job proves to be a rather complicated matter, since the procedures applicable to obtain a residence permit for employment are a deterrent for the entrepreneurs, because San Marino citizens are considered non-EU citizens. In addition, due to the Community citizenship requirement, younger San Marino citizens find it hard to participate in training stages held with public and private entities (such as financial and banking institutions, companies, etc.) and to apply for the jobs offered by the latter.

As regards safety, social security and healthcare, the laws of San Marino provide for the recognition of all the benefits envisaged in the main European regulations. San Marino has also entered into specific Agreements with a number of countries. In some cases (Switzerland and Italy) the agreement has been followed by an administrative implementing measure, whereas in some other cases (France and Belgium) this has not happened, even though, for the purposes of accruing the right to the benefits recognised in their pension funds, these two countries take into account the periods worked in the Republic of San Marino.

To this regard, the Agreement on Cooperation and Customs Union sanctions a regime which is free of any discrimination between San Marino citizens and EU citizens about work conditions, salaries and social security. It also provides for the right to the aggregation of the periods of contribution accrued in different States for all the workers who have worked in more than one Member State. As regards foreign workers in possession of a regular residence permit - frontier workers excluded -, after being employed as workers, they enjoy the same benefits guaranteed to the workers of San Marino. As regards the protection of the rights of employees and self employed persons to supplementary pension schemes, there are currently no regulations establishing a supplementary pension scheme, as indicated by the Social Security Institution.

Every San Marino or foreign citizen who is registered at the national health and social security service and resides in the territory of the Republic holds a health system card, whilst any residents who are not citizens of San Marino are subject, if unemployed, to a capitation payment for healthcare purposes.

Conversely, the citizens of San Marino who stay in the territory of a foreign State have no healthcare coverage guaranteed by the public system. Given that they are not entitled to the European Health

Insurance Card, they must enter into private insurance agreements whenever they travel to any European country.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

This possibility entails:

- The need to review the criteria for the functioning of the authorisation regime currently governing the release of permits of stay and residences. An adjustment of the regulatory framework of San Marino to the principles and provisions of the EU would probably be required.
- The need to review the current provisions regulating the labour market, which guarantee, based on the national preference criterion, a privileged treatment for the citizens of San Marino.

What would the **implications** be?

- The opening of the system could lead to an increase of the migration pressure in the country and more competition in the domestic labour market. An indiscriminate opening raises some concerns, since it could lead to a significant reduction in the job opportunities currently available, given the competition from a larger and better qualified labour force.
- The integration of San Marino within the European single labour market would mean - for the country and for its citizens as well - being able to enjoy the freedom of movement for workers. For San Marino workers this means having the opportunity to access the labour market of the Union under the same conditions guaranteed to the other EU citizens and to enjoy more training and qualification opportunities. The main problems encountered by the citizens of San Marino in circulating and residing in Europe would thus find a solution. However, the consequent impact of the mutual circulation of EU citizens in San Marino on the Republic's labour market should also be taken into account.

Towards the European Economic Area

Accession to the European Economic Area would create the opportunity to pursue the same objectives as participating to the single labour market, together with possible implications at a domestic level, as inferred and registered in the event of implementation by the country of the main Community provisions on this issue.

With reference to the accession to the European Union, however, the agreement would not guarantee the Community citizenship to the citizens of San Marino. The implications have not been taken into consideration by the Working Group, although it is acknowledged that this issue represents an important difference when it comes to, for instance, the right to vote and to stand as candidate at the elections for the European Parliament.

Improving What We Are

This topic may not be subject of possible negotiations with the European Union aimed at taking further the existing Agreement on Cooperation, since this agreement does not provide for any legal basis to expand the access to the European labour market.

The other possible solutions for enhancing the current status of the country as a non-member country, even by adopting different approaches which do not provide for the accession either to the EU or to the EEA, include:

- Entering into bilateral agreements with the countries identified as some of the main destinations of the people of San Marino for working and training reasons. In such case, it would be possible to achieve the integration of San Marino with one or more countries of the European Union, but not with the EU as a whole. This type of agreements would allow San Marino to ensure the access, under reciprocity conditions, to the labour market of a single Community state. To this regard, the State is also required to apply the existing bilateral agreements by preparing specific administrative procedures. Furthermore, it should be noted that the process of negotiation and ratification of the agreements would last quite a long time.

- The negotiation of an agreement on the free movement of persons with the European Union similar to that entered into by Switzerland. The possible 'success' of this initiative, however, depends on the will of the European Union to negotiate this type of agreement with a small State, but at the moment the EU does not have such intention.

- The strengthening of the existing Agreement on Cooperation as regards social security and healthcare, by applying the principles sanctioned by means of a decision of the Cooperation Committee, or entering administrative agreements with individual States, as is the case for Italy. These agreements are essential for applying such rights, specifically as regards the aggregation of the periods of contribution.

- In any case, these initiatives could be included in a more general effort from the country to assess the possibility to execute other international instruments (such as, but not limited to, the revised European Social Charter), in order to initiate the autonomous aligning to the European rules and principles applicable to such issue, taking into consideration the fact that no huge problems are expected as regards the provisions of San Marino. As regards social assistance, it is not possible to extend the Agreement on Cooperation to this sector, due to the lack of any legal basis.

FRONTIER WORKERS: WHAT IS THERE TO KNOW?

Frontier workers are persons who work in one Member State (in which, therefore, they have the status of 'migrant worker') but live in another Member State (in which they have the right to hold residence). In Europe, there are over 600,000 persons who live in one country and work in another, and they must comply with different national practices and legal systems. What distinguishes frontier workers from traditional migrant workers is the fact that the former hold residence in one country and work in another. While migrant workers leave their country of origin - either with their family or alone - to live and work in a country other than their own, frontier workers have a dual nationality for both the country where they hold residence and for the country where they work.

There are several cross-border regions in Europe. These are defined as areas characterised by a significant level of workers' border crossing. Until now, no community law has been developed on this issue. However, in terms of safety and social security, frontier workers residing and working in the EU enjoy, just like all migrant workers, the benefits of the principle of non-discrimination and equal treatment provided for those workers who move within the territory of the Union. As regards employment laws, frontier workers are subject, just like migrant workers, to the laws of the country where they work.

In general, these persons are subject to the laws of both countries, according to whether the rights and duties applicable are those of the country of work (often related to taxation, in some cases, and employment rules) or those of the country where they live (often related to real estate property taxes, tax rules, residence formalities, etc.). In any case, the regulation of frontier work is referred to bilateral agreements between the Member States involved. These agreements should be generally based on the principle of taxation in the State where the workers perform their activities or, in any case, where they receive the core of their taxable resources.

WHERE ARE WE?

The concept of 'frontier worker' is specified in the regulations of San Marino and includes all employees working in the territory who are not San Marino citizens and have neither residence nor permit to stay, but are resident or domiciled or staying in Italy, where they return to every day. This definition includes non-EU citizens, provided they have a valid residence and work permit issued by the Italian authorities.

The Working Group has identified some critical issues related to this topic, which however must be resolved on a bilateral basis with Italy. First of all, frontier workers employed in San Marino experience tax uncertainties due to the double taxation of their income.

Secondly, once they are employed, frontier workers enjoy the same contractual conditions as resident people. However, they are usually employed on a fixed term basis, unlike resident workers, for whom the employment or the passage to permanent contracts is easier.

In addition, based on the agreements entered into with the social partners, there is a 'special' list for the frontier workers who lose their job, whereas according to the laws of the EU they should be registered under the same conditions applying to the workers who are citizens of the country.

Finally, despite the fact that the regulations on the welfare support system apply to all workers, frontier workers usually benefit of mobility allowances, given that the majority of them is employed on a fixed term basis. In order to offset this de-facto discrimination, they are granted the benefits of the Earning Supplement Fund for a period of 3 months in case of job loss due to staff reduction.

The analysis of the labour market in San Marino drove the Working Group's attention to the 'reverse frontier workers' phenomenon, that is to say citizens of San Marino who go to Italy every day to work. In this case, San Marino citizens do not benefit from the income allowance since there is no agreement in place to prevent double taxation. Whilst Italian frontier workers may benefit from income allowances in their income statements, there is no benefit for San Marino workers who work in Italy, where, on the contrary, significantly higher taxes are applied compared to those deducted in San Marino. Furthermore, no expenses, such as interests paid on lending for house purchase or medical expenses, may be deducted. Consequently, there is no equality of conditions as regards this matter. On the contrary, this phenomenon is not affected by any particular problems as regards healthcare, pensions and social security, in light of the reciprocity conditions provided for under the Agreement entered into with Italy.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

At a Community level, there is no rule harmonisation either of the rules concerning the definition of frontier worker or of the rules applicable to the division of taxation rights. Generally, the Member

States regulate the flows of frontier workers by means of Agreements against double taxation, which establish the country competent for taxation.

Overall, the treatment of frontier workers is based on the Community principles of non-discrimination and equal treatment provided for the purposes of the free movement of workers, as well as on the general principles guiding the coordination the social security schemes. This issue, however, should be regulated on a bilateral basis between the States impacted by the phenomenon of frontier work.

Towards the European Economic Area

The same remarks also apply in case of accession to the European Economic Area which, to this regard, adopts the same provisions.

Improving What We Are

The issues of the treatment of frontier workers and of the taxation of income produced in the country of work cannot be resolved either with the accession to the European union or with the accession to the European Economic Area. Therefore, San Marino must negotiate this topic with Italy on a bilateral basis.

FREE MOVEMENT OF CAPITAL AND FINANCIAL SERVICES

MOVEMENT OF CAPITAL: WHAT IS THERE TO KNOW?

The creation of the Single Market within the European Union also refers to the movement of capital and financial services. Any restrictions to the movement of capital and to the payments between Member States or between Member States and non-members countries is, therefore, prohibited. As an exception to the foregoing, Members States are allowed to apply specific restrictions, protective measures or sanctions to non-member countries.

The freedom to move certain types of capital is a prerequisite for the effective exercise of other freedoms, in particular as regards the freedom of establishment and the free provision of financial services.

As a matter of fact, in order for the capital to freely circulate, the following is prohibited:

a) Discriminatory national provisions, which provide for a direct or indirect discrimination based on the criteria of nationality and place of residence of the parties and on the place where the capital will be invested.
b) Non-discriminatory national provisions (except where objectively grounded).
c) National regulations that restrict or hinder the free circulation of capital, for instance regulations that prevent the purchase of shares or discourage the investments of investors from other countries.
d) Tax provisions that, in breach of the principle of equal treatment, constitute an inequality of treatment when applying the taxation, based on place or type of source of the investment.

The movement of capital may be restricted, both within the EU as well as with non-member countries, for reasons mainly connected to taxation, prudential supervision, public policy issues, money-laundering and financial sanctions agreed within the scope of the Common Foreign and Security Policy. These restrictions must satisfy public interest requirements, the principle of proportionality and that of legal certainty. This means that they must not serve purposes of a purely economic nature, must provide for the possibility of redress and must include only strictly necessary provisions.

Directive 2007/64/EC on the payment services in the Internal Market (PSD) constitutes the legal basis for the creation of a single European payment market, in which the same rules concerning electronic payments apply in 30 European countries (in the European Union, Iceland, Norway and Liechtenstein). The PSD is applicable to all types of electronic payments and to payment transactions other than cash, bank transfers, direct debits, card payments (including payments made with credit card) and money transfers, to on-line payments and payments made through mobile phones. Based on this directive, the single area for Euro-denominated payments has been established (SEPA – *Single European Payment Area*). The SEPA area includes the European Union, Iceland, Liechtenstein, Monaco, Norway and Switzerland. In order to facilitate its implementation, the EU adopted further measures on e-money institutions, cross-border payments and, in particular, on the tariffs applicable to the direct payment of debts, as well as, lastly, on information data related to the ordering party included in the transfer of funds.

The entire Community *acquis* on the topic of free circulation of capital is covered by the EEA Agreement, although several provisions introduce residual restrictions. In addition, all EEA Member States may introduce restrictions in the event that the movement of capital leads to some malfunctions in the capital market, as well as in the case of difficulties or serious threats to the balance of payments. Except for specific cases justified by reasons of urgency, these measures must be subject to

prior negotiations and exchange of information within the EEA Joint Committee. Lastly, the provisions concerning the free movement of capital do not jeopardise either the right of the EEA Member States to apply tax regulations which differentiate resident taxpayers from non-resident taxpayers or the right to adopt essential measures to respond to any infringement of their own laws and regulations, as regards tax matters or the prudential supervision of financial institutions.

FINANCIAL SERVICES: WHAT IS THERE TO KNOW?

As regards the financial services, the EU has set rules for the authorisation, operation and supervision of financial institutions and regulated markets. Banking policies are based on the principles of mutual recognition, 'single European passport' and 'home country control', a system which allows the operators of the financial services lawfully incorporated in one Member State to establish or provide services in another Member State without any additional authorisation requirements.

The laws and regulations on this issue are harmonised and applied equally to the intermediaries and financial products present in one State of the European Union or of the European Economic Area. The supervision is coordinated between the authorities of the EEA and of the EU and is exercised also crossing national borders.

Safe and regulated financial institutions are essential to the financial stability of the EU and require a common framework capable of guaranteeing prudential supervision and the protection of consumers within the European Single Market. For this purpose, the EU has developed a specific legislation on banking and financial conglomerates which establishes certain requirements for the authorisation, operation and prudential supervision of credit institutions, as well as the requirements related to the calculation of asset adequacy applicable to credit institutions and investment companies. The supplementary supervision of financial conglomerates and the prudential supervision of the activities of e-money institutions are also regulated.

In light of the financial crisis broken out in 2008, existing laws and regulations have been strengthened as regards the deposit guarantee schemes, so that all the Member States would have a security network for the holders of bank deposits to protect them from bank insolvencies and, in order to protect financial stability, to prevent the 'run to the bank' risk. The laws and regulations on the management of the crisis of credit institutions harmonise certain provisions related to the restructuring and liquidation of credit institutions with branches in more than one Member State.

Other harmonised provisions concern the insurance and occupational retirement sectors, market infrastructure and collateral warranties, security market and investment services market, prospectuses related to IPOs of financial instruments or their listing in a regulated market, transparency requirements for the regulated markets, market abuses.

The creation of an integrated market also entails the integration of the surveillance activities performed within the EU by the European Central Bank. The provisions governing cross-border surveillance and consolidated cross-border surveillance are aimed at ensuring an effective and complete supervisory action on the authorised entities in a specific Member State which operate and provide services through branches, or in a regime of free provision of services, or also through affiliates (i.e. through the holding of investments in other credit institutions) in Member States different from the country of authorisation or original establishment. The structure of the surveillance established in Europe consists, in particular, in the definition of rules governing coordination and strict cooperation, information exchange and the division of supervision competences between the European surveillance authorities - especially as regards that of the country of establishment of the so called 'parent' bank or of the

original Member State - and that of the country of establishment of the subsidiary bank - whether a subsidiary or a branch - of the host Member State.

Within the European Economic Area

The entire Community *acquis* on financial services is covered by the EEA Agreement. However, EEA States which are not members of the EU do not participate in the activities of the European Central Bank. Another element of diversity is related to the terms under which the surveillance authorities of the EEA countries participate in the representative bodies of the surveillance authorities of the countries of the European Union, i.e. the CESR for the financial sector, the CEBS for the banking sector and the CEIOPS for the insurance sector[5]. The EEA countries participate in these bodies as advisors only, since they do not have any voting right. This right in fact is reserved to the surveillance authorities of the EU countries.

WHERE ARE WE?

The status as third party which characterises the financial system of San Marino evidenced the first critical issues when the (although partial) economic and financial integration existing between San Marino and Italy started to deteriorate[6]. These critical issues are partly of a technical nature, since they result from the misalignment generated over the time between the legal systems of the two countries, also due to the fact that Italy is a member of the European Union whereas San Marino is not. They sharpened when the financial system of San Marino was identified as being autonomous and independent from the Italian system and qualified as a non-member country system, although the Republic has already initiated an alignment strategy to the European and international standards, particularly with regard to surveillance.

Due to the geographical position of San Marino within the European continent, having considered the direct and indirect obligations to which San Marino is subject by virtue of the agreements entered into with the European Union or as an effect of economic and financial relations, San Marino's latitude in decision making as regards economic and financial matters is rather limited. Therefore, a repositioning of the financial system of San Marino is required within a context of greater European integration.

With strict regard to the movement of capital, thanks to the Monetary Agreement, which provides for the utilisation of the euro as currency of legal tender in the Republic, San Marino is already integrated, as a non-member country, in the euro area. This entails that no monetary policy functions are assigned to the Central Bank. Between the Republic and the EU, thus, the movement of capital is already liberalised, particularly with reference to portfolio investments and especially in compliance with international anti-money laundering regulations. There are, instead, some restrictions on the movement of capital represented by foreign direct investments (FDI), whereas such investments are directed to specific sectors of the economy. In addition, the launch of entrepreneurial initiatives in certain sectors, including, but not limited to, the banking and financial sector, is subject - besides the required evaluation of the competent administrative authority - also to the authorisation of the government (the so called 'nulla osta', or clearance), as regards both non resident and resident

[5] These technical bodies intervene in the *rule-making* process of the European Union - known as the 'Lamfalussy method' - on various grounds, based on their competence. This process was created for the purpose of pursuing the maximum harmonisation in the adoption and implementation of the Community guidelines by the Member States.

[6] The economic and currency integration between Italy and San Marino dates back to 31 March 1939, when the Agreement of Friendship and Good-Neighbourly Relations between Italy and the Republic of San Marino was signed. Based on this Agreement and, in particular, on art. 47 thereof, an Agreement came into force on 1 April 1994 as regards financial and currency relations between Italy and San Marino, through an additional act inclusive of the official records thereof, signed in Rome on 4 March 1994. This Agreement regulates the relations between the two countries under a currency, goods, services and capital profile. Through this Agreement the Republic of Italy recognises, in fact, to the individuals and legal entities residing in San Marino the same currency status recognised to the individuals and legal entities residing in Italy.

persons. Lastly, there are restrictions concerning the purchase of real estate properties by individuals who are citizens of a country other than San Marino and by foreign legal entities.

As regards the economic and financial system of San Marino, whose main features are represented by the essential and considerable interaction with foreign markets, systems, operators and suppliers, the strong economic interdependence between San Marino and the external environment, the interdependence with productive players which are non residents and the requirements for cross-border market opportunities, San Marino peculiarities entered a state of crisis. Over the last few years, the model adopted so far, based on the synergies made possible by the protection of the banking secrecy and of the corporate anonymity, by moderate regulation and by a light tax system, has evidenced - within the context of the international evolution which San Marino cannot disregard - some signs of crisis, which call for the identification of a new model of growth and development. To be sustainable, the economic and financial system of San Marino should convert to a model based on the production of services, both banking and financial, capable of maintaining their competitiveness within the new international scenario, through a reduced internal taxation and a strong financial integration with other more mature and larger Countries and markets.

San Marino status as non-member country implies a number of specific critical issues for its financial system.

The main issues in accessing Community markets and clients are the following:

- The limited dimension of the domestic market, no access to the markets of other countries, and operations with clients in other countries that are increasingly subject to legal and reputational risks.
- Strict requirements - if not impossibility - to freely operate in the markets of other countries as a provider of financial services and products developed under San Marino law.
- Strict requirements - if not impossibility - for the intermediaries of San Marino to promote and provide banking, financial and insurance services in other countries.
- The participation of San Marino financial companies in the capital of financial companies in other countries, which is subject to restrictions or hindered by the lack of cooperation agreements between the Central Bank and the foreign surveillance authorities, as well as by the existence of financial regulations in San Marino which are not equivalent to those applicable in the rest of Europe or at an international level.

The main critical issues in the access to the European payment system are the following:

- The procedures for the banks of San Marino to access the Italian payment system - which occurs indirectly through Italian intermediary banks - are governed by the Bank of Italy in its position of operator of the system.
- Currently, the banks of San Marino may have access to the payment system of the euro area only according to terms and conditions specifically determined by the Bank of Italy with the consent of the European Central Bank.

The main critical issues regarding the internationalisation opportunities for the financial system of San Marino are the following:

- The internationalisation of the financial system of San Marino is rather complex to achieve, given the framework of the agreements with the European Union in which the Republic is included, and given the fact that there is currently no access to the European Single Market.
- The participation of foreign financial companies in the capital of financial companies under San Marino law (the so called foreign direct investments) is subject to restrictions or is hindered by the lack of cooperation agreements between the Central Bank and the foreign surveillance

authorities, as well as by the existence of financial regulations in San Marino which are not equivalent to those applicable in the rest of Europe or at an international level. In other terms, in the current scenario it is difficult or impossible for San Marino intermediaries to have access to the European market, as well as for foreign credit institutions to have access to the market of San Marino. This is due to the misalignment in the regulations of San Marino compared with the European laws and regulations, specifically as regards cross-border consolidated surveillance.

The main critical issues related to the movement of capital are the following:

- The existence of a Monetary Agreement between San Marino and the European Union, which allows the Republic to use the euro as currency of legal tender, entails that no monetary policy functions are carried out by the Central Bank of the Republic of San Marino. Although it is possible to affirm that – in general – a liberalisation regime is already in place as regards the *cross border* movement of capital, there are growing concerns related to the existing financial relations between the operators of San Marino and those of the EU.

- No access to the refinancing operations of the European Central Bank. The adoption of the euro, together with the impossibility to have access to the refinancing operations with the European monetary institutions, determines the absence in the San Marino system of those technical instruments required for the protection of the stability of the system, in particular during a liquidity crisis.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

The movement and the provision of financial services jointly considered should lead to:

- The alignment of the legal framework of San Marino with the European laws and regulations on the movement of capital and financial services, which would entail the solution of the critical issues outlined above as regards the access to the markets and clients in other EU states; or the opportunity would arise to have free access to the Community markets and to provide the financial services and products of San Marino. In addition, greater volumes would be guaranteed also to the intermediaries of San Marino, as well as the possibility to participate in the capital of foreign financial enterprises.

- A structural transformation of the regulations of San Marino, especially with reference to surveillance, and a change in the competitive conditions of the market following the adoption of the principle of reciprocity - given that the legal possibility to operate abroad recognised to the intermediaries of San Marino would correspond to the freedom for the European intermediaries to provide services in San Marino. They would also lead to a review of the surveillance functions and to an expansion of the relations and cooperation with other surveillance authorities in the European Union states.

- As regards the access to the European payment system, the implementation of the regulations related to the SEPA would allow the direct access of San Marino to the payment system of the euro area, a reduction in the requirement for intermediation through Italian banks and a higher certainty in the utilisation of payment systems.

- As regards the internationalisation opportunity, the accession to the European Union with the consequent accession to the European Single Market, the harmonisation of the financial laws and the equivalence of the surveillance actions of San Marino to that of the other Member

States would enhance the competitiveness of San Marino in general, also with reference to the attraction of foreign direct investments from outside Europe, thus fostering the internationalisation of the financial system of San Marino also beyond the European scenario.

- As regards the movement of capital, with the accession to the European Union the Central Bank of the Republic of San Marino could be included in the ESCB (European System of Central Banks) and would also be allowed to participate in the refinancing system of the ECB.

Towards the European Economic Area

The accession to the European Economic Area determines the same results and allows to pursue the same objectives of participation to the Single Market as with the accession to the European Union. The Community laws and regulations governing banking, financial and insurance matters, in fact, derive entirely from the EEA Agreement. However, as mentioned above, an element of diversity is related to the terms under which the surveillance authorities of the EEA countries participate in the representative bodies of the surveillance authorities of the countries of the European Union, i.e. the CESR for the financial sector, the CEBS for the banking sector and the CEIOPS for the insurance sector. The EEA countries participate in these bodies as advisors only, since they do not have any voting right. This right in fact is reserved to the surveillance authorities of the EU countries.

As regards the movement of capital, a possible accession to the European Economic Area could help maintain certain restrictions which still exist in San Marino (such as, but not limited to, those related to real estate investments made by foreign persons, or production investments in certain sectors of the economy), since also the existing agreements entered into by countries such as Liechtenstein contain broad derogations to the principles of freedom of the single market, in consideration of the national peculiarities (please, see the section on case studies).

Improving What We Are

The permanence of the status of non-member country for San Marino, and thus for its economic and financial system, could however change if the Monetary Agreement entered into on 29 November 2000 with the European Union is renegotiated. This possibility arose in the summer of 2009, when the European Commission requested that the aforementioned Agreement be renegotiated. For the purpose of ensuring conditions more in line with the Community legislation with reference to the use of the euro as official currency of the Republic of San Marino, the Commission included among the points to be renegotiated the implementation in the legal framework of San Marino of a significant portion of the Community *acquis* on banking and financial matters in 5 areas, including anti-money laundering, banking and financial regulations and the production of statistics. The renegotiation of the Monetary Agreement would thus appear to correspond to the maintenance of the status of San Marino as a non-member country, with the enhancement of the existing agreements.

What would the **implications** be?

- The implementation of the Community *acquis* requires that more adequate regulatory instruments, capable of supporting the implementation, be identified and prepared.

- Other support activities, collateral to the production of regulations, will have to be realised, such as:

  - The arrangement of new operational and administrative processes by the Central Bank, the Financial Intelligence Agency and the other competent public institutions.

- The development of appropriate technological infrastructures to support the fulfilment of the new international commitments.
- The strengthening and further professionalisation of the institutions competent on this matter.

- The renegotiation of the Monetary Agreement and the subsequent implementation in the legal framework of San Marino of the Community *acquis* does not imply, on its own, either the mutual recognition of the authorisations to operate obtained by the operators of San Marino, or the access to the payment systems, or also the possibility to take advantage of the refinancing activities of the European System of Central Banks (ESCB).

- The financial industry and the surveillance authorities will be required to carry out a regulatory adjustment which will entail a significant increase in the 'burdens' for the financial operators as well as for the institutions - in an economic situation characterised by not positive growth rates - with a further impact on the available resources.

- The new text of the Monetary Agreement could require San Marino to implement the MiFID guidelines into its legal framework. This could represent an opportunity for the growth and qualification of the San Marino system in the investment services sector and could be considered as a preparatory stage for the realization of any subsequent internationalisation strategy or for the expansion of its operations in Europe. As a matter of fact, in a transparent tax system it could be difficult to develop a competitive environment in the banking services area. The investment services sector, on the other hand, could certainly offer a wider offer and services or products of higher quality.

- Within the context of the renegotiation of the Monetary Agreement, specific provisions could be introduced, aimed at ensuring the continuity of the payment flows from an operational perspective (especially between Italy and San Marino) and the continuation of the relations with the Italian intermediary banks (which provide such services based on a trilateral agreement entered into in June 2009 with the Central Bank and the banks of San Marino).

- The structural change which will result from the execution of a new Monetary Agreement, together with the implementation of the new international standards on taxation, may be sustained by the financial system of San Marino only if an expansion of the markets in which San Marino intermediaries may operate is ensured.

Apart from the possibility to renegotiate the Monetary Agreement, the operational limitations of the financial system of San Marino may hardly be resolved through the execution of specific bilateral agreements with the European Union on banking, financial and insurance matters. Although the Community laws and regulations provide for the possibility of such agreement, the success of this initiative depends on the will of the European Union to enter into *ad hoc* bilateral agreements, but at the moment the EU does not have such intention**.**

TAXATION

EUROPEAN TAX POLICIES: WHAT IS THERE TO KNOW?

Tax policies play a significant role in the Single Market. However, the EU has relatively little competences in taxation: The EU, in fact, has no power to introduce or collect any taxes. Community tax policy is comprised of two elements: Direct taxation, almost entirely regulated through bilateral agreements, remains exclusive competence of the Member States; indirect taxation, which affects the free movement of goods and the free provision of services, is subject to certain provisions which mainly provide for its harmonisation. As regards taxation, the action of the European Union is, thus, only of an ancillary nature: Such action, in fact, is not meant to standardise the national effective taxation systems, but is rather intended to make them more compatible not only as between them, but also with the objectives of the Founding Treaties.

The creation of the Single Market and the completion of the economic and monetary union have led to several initiatives in the taxation sector in general:

- the fight against unfair tax competition between Member States within the internal market through different tax rates and regimes as regards indirect taxation. For this purpose, initiatives were launched in the field of Valued Added Tax and excise duties;
- the fight against tax evasion and double taxation as regards direct taxes, where existing legal framework is mostly comprised of bilateral agreements between Member States.

Despite the wide acceptance of these objectives, tax policies, which represent an element featuring national sovereignty, continue to rely mainly on the Member States.

The Agreement on the European Economic Area does not cover taxation, even though its Member States have a Valued Added Tax system in force. Therefore, the scenario of the integration in the EEA is not taken into consideration.

DIRECT TAXATION: WHAT IS THERE TO KNOW?

Direct taxation is regulated mainly outside the Community laws. Taxation of the cross-border income flows is covered by bilateral tax agreements - between Member States as well as with non-member countries. Therefore, it is up to national governments to set the tax rates applicable to corporate profits, personal income, savings income and capital income. However, the EU has launched a series of initiatives aimed at promoting a better coordination of the national direct taxation systems. The aim is to ensure the compliance of the national systems with Community laws. These initiatives consist in the promotion of solutions to the common problems resulting from the interaction of the many tax systems existing within the internal market. Hence they refer to the abolishment of any discrimination and double taxation for the benefit of individuals and enterprises, as well as to the fight against tax evasion and fraud and the preservation of the tax base. Particular care is devoted to the taxation of companies, so as to avert the risk that the costs resulting from the requirement to comply with the provisions of different tax systems could hinder the movement of assets, services and capital within the European Single Market.

INDIRECT TAXATION: WHAT IS THERE TO KNOW?

The Treaties founding the European Union provide for the harmonisation of the laws on turnover tax, consumption tax and other indirect taxes, to the extent that such harmonisation is required to ensure the implementation and functioning of the internal market and to avoid any distortions of competition. For this reason the Value Added Tax was introduced in the European Economic Community in 1967 and replaced the different taxes on production and consumption applied by the Member States until then. The decision taken in 1970 to devote a percentage of the VAT revenue calculated on an harmonised base to the financing of the Community budget as an own resource gave a further boost to the harmonisation of the VAT. The Sixth 'VAT' Directive (Directive 77/388/EEC) had the effect of ensuring that such tax would be applied to the same transactions in all Member States. This has determined a common tax base and represents a real legislative body which is comprised of certain Community definitions. The 'VAT Directive' (Directive 2006/112/EC) adopted in 2007 gathers the different amendments provided for in the Sixth VAT Directive into one single legislative act, bringing simplification and clarity into this sector. Since 2000 the action of the EU as regards VAT focused on the simplification and modernisation of the tax, on its more uniform application and on administrative cooperation.

Common regulations have been defined with reference to invoicing - including electronic invoicing - for the purpose of reducing bureaucratic burdens for enterprises and more effectively combating VAT frauds. Common regulations have been established as regards the imposition of VAT on electronic services (radio-television services, e-commerce). The regulations have been reviewed as regards the definition of the place where the services are provided. Based on the reviewed regulations, the provision of services between businesses will be taxed in the country of consumption, rather than in the place of residence of the provider, with some exceptions thereof. Clearer provisions have been adopted also as regards VAT refunds to taxable persons in a Member State other than that of the refund. Reduced VAT rates may be applied on a permanent basis on certain labour intensive local services.

The European Union has provided that the abolition of any fiscal controls at the borders implies, besides the creation of a uniform VAT tax base, also the definition of maximum and minimum limits to be applied to VAT rates at a Community level. The foregoing is intended to ensure the correct functioning of the Single Market and fair competition within it. Member States apply an ordinary VAT rate which corresponds to a percentage of the tax base which is identical for the sale of goods and the provision of services. Up until 31 December 2015 this ordinary rate may not be lower than 15%.

Member States may apply reduced rates only to the transfer of goods and provisions of services of specific categories, such as food products, pharmaceutical products, water, etc., but not to electronic services. Reduced rates are set at a percentage of the tax base and may not be lower than 5%. Member States may apply a reduced rate to the supply of gas, electricity or district heating, provided that there is no risk of distortion of competition. This may be applied also to the import of works of art, collectors' pieces or antiques.

Since the Community laws require that standard VAT be not less than 15% and the reduced rate be not less than 5%, the rates actually applied vary as between member States and types of products. In addition, certain Member States maintained separate rules in specific areas. Based on the provisions of Directive 2006/112/EC, Member States may be authorised to waive the common rules on VAT for the purpose of simplifying the procedures for the imposition of VAT or in order to prevent certain types of tax evasion.

As regards VAT, the EU launched many initiatives aimed at strengthening the administrative cooperation between Member States, in order to combat international frauds within intra-community transactions, as provided for in the *Fiscalis* programme, active from 2003 until 2013. For the purposes

of a more efficient identification of, and fight against, frauds, the computer-based VIES system (*VAT Information Exchange System*) has been adopted at a Community level, which allows to verify VAT tax codes.

As from 1 January 1993, with the completion of the European Single Market and the consequent abolition of internal customs and borders, a system for the exchange of statistical information - INTRASTAT - has been created. This system identifies the exchanges of goods between EU countries. This system is based on the declarations provided directly by the enterprises, for both statistical and tax purposes**.**

Such statistics are related to the following:

a) Community goods, i.e. goods produced within the customs territory of the Community;

b) Non-Community goods which have been released for free circulation into a Member State of the Community.

National authorities are required to create and manage a register of intra-community traders, including the consignors and consignees of the goods. Customs offices must provide the national authorities with the statistics on the forwarding and arrival of goods. As primary identification key the register uses the VAT registration number of the trader which carried out the transaction and is related to traders active towards Community markets and non-Community markets alike. The statistical territory valid for the purposes of INTRASTAT surveys coincides with the customs territory as it was defined in article 3 of EEC Regulation n. 2913/92 dated 12 October 1992, which established a Community Customs Code. Such Code does not include San Marino.

SAN MARINO AND DIRECT TAXATION: WHERE ARE WE?

The major act of San Marino within the context of direct taxation is Law no. 91 dated 13 October 1984 - Legislation establishing income tax, as subsequently amended. Since then, San Marino adopted the OECD criteria which regulate the permanent establishment. On the basis of these criteria income is taxable in the country where the permanent establishment is located and the tax credit from the State where the main company is located is recognised (San Marino Legislative Decree n. 144 of 2010). It also adopted the OECD standard to establish the tax residence of both individuals (a minimum of 183 days) and legal entities (the place where the permanent establishment is managed from).

Income of individuals resident in San Marino is subject to a progressive rate income tax applied on a tax base comprised of any income earned by the taxable individual net of any deductible liabilities. As regards income generated abroad which is therein subject to a withholding tax, only the declaration is required, with the simultaneous tax exemption. In this context, the main critical issue is represented by the delay in the conclusion of the Bilateral Double Taxation Agreement with Italy, which would regulate more clearly the tax treatment reserved to the Italian frontier workers employed in San Marino, but also the cases of reverse frontier workers, i.e. of San Marino citizens employed in Italy, which are recently occurring.

As regards *corporate taxes*, the laws and regulations governing *taxation of corporate income generated abroad*, as modified by San Marino Law n. 55 dated 30 April 2004, introduced the principle of the 'tax credit'. In practice, the taxes paid by the companies abroad on income generated therein may be deducted from the net tax payable up until the correspondence with the tax rate of San Marino, which corresponds to the relation between the income generated abroad and the overall income.

As regards *taxation of dividends*, any profits distributed by corporate enterprises are not subject to withholding tax. The general tax on taxable income paid by such companies releases also the persons receiving the distributed profits. In other words, the dividend received by a resident company from another resident company does not constitute tax base. Dividends received by foreign companies are excluded from corporate income, except for non resident real estate companies.

As regards *withholding tax*, interests paid by companies of San Marino to non resident persons - except for those paid to foreign financial companies and credit institutions - are generally not subject to any withholding tax, being such interests non-deductable. To this regard, it should be borne in mind that the EU and the Republic of San Marino have entered into an Agreement that establishes measures which are equivalent to Directive 2003/48/EC on the taxation of *savings income* in the form of interest payments.

In consideration of the direct taxation system briefly outlined above, a real need arises for a tax reform. Therefore, it is necessary to reconsider the exemption system. It is also necessary to consider the development of a fiscally competitive system, which should be accompanied by a reallocation of taxes that takes into account the changes occurred in the economic system. Even though the scopes of direct and indirect taxes are not unlinked, priority should be given to the intervention on the reform of indirect taxation. For these reasons, the features and implications of possible integration scenarios as regards direct taxation have not been analysed in-depth by the Group, also in consideration of the fact that the Community laws only promote the coordination of the Member States' direct taxation systems.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

As regards corporate taxes, the tax system of San Marino is in general compatible with the guidelines of the EU concerning the respect of principles such as non-discrimination based on nationality, the level of taxation - which does not imply a detrimental tax competition - and the absence of any hindrance to cross-border transactions, since intra-group corporate transactions are not subject to taxation.

However, in the event of accession to the EU, San Marino should compensate the lack of legislation on taxation of intra-group transactions by meeting, at least, the general principles set in the directives on mergers, spin-offs, capital increases and transfer pricing.

With reference to the taxation of savings income, in the event of San Marino accession to the EU and acceptance of the automatic exchange of tax information, it would be possible to withdraw from the Agreement with the EU which provides for measures equivalent to those defined in Directive 2003/48/EC, since it should apply such Directive as part of the Community *acquis*. It is the opinion of the Group that San Marino, in negotiating bilateral tax agreements with the countries of the EU, should take into due account the possible evolutions of the Community procedures for the exchange of tax information, also in light of the forthcoming developments concerning the administrative cooperation in this field[7].

With regard to the taxation of income of frontier workers, given that there is no harmonisation of the regulations at a Community level about the definition of frontier worker, nor of the rules applicable to

[7] On 26 November 2010 in Brussels a proposal for a Council Directive concerning the administrative cooperation in the tax sector was submitted, and, during the ECOFIN Council held on 7 December 2010, a political agreement was reached on such proposal between the Ministers of economy and finance of the EU. The purpose of this directive is to allow the Member States to more effectively fight tax frauds and evasion and to more easily recover any unpaid taxes through an information exchange mechanism focused on the income received by citizens residing in other Members States. The directive provides that, starting on 1 January 2014 - the expected date of its coming into force - Member States will no longer be able to avail themselves of the bank secrecy to refuse to provide the information required.

the division of taxation rights, San Marino should regulate the issue at a bilateral level with neighbouring Italy.

In general terms, as regards direct taxes, the accession to the EU would entail not too burdensome implications, given that San Marino is already adopting the European standards by means of the execution of OECD-type Agreements, implementing operational schemes which are valid also at European level.

Improving What We Are

In the Memorandum of Understanding attached to the ECOFIN Agreement, it is provided that the conclusion of tax agreements with the Member States of the EU and the commitment of San Marino to provide for the exchange of information according to the OECD standards would foster a wider economic and tax cooperation between the Republic and the EU. Therefore, negotiations could be initiated with the Member States with the purpose of eliminating or reducing, at a bilateral level, double taxation with reference to different forms of income. The path taken by San Marino towards transparency through the conclusion of agreements, especially with Member States of the EU, to prevent double taxation or in favour of the exchange of information on tax issues based on 2005 OECD standards, is in compliance with the intents expressed in the aforementioned Memorandum.

SAN MARINO AND INDIRECT TAXATION: WHERE ARE WE?

The indirect taxation system of San Marino - the so called '*monofase*' or indirect import tax - has remained virtually unchanged since its introduction in the 70s. This tax applies only to the introduction of goods and related assets within the territory. Several types of exchanges and the services are exempt. The system provides for the refund of the tax paid when the goods are exported, also after their transformation. This is why the tax is in theory neutral for exporters, whereas for manufacturing companies it represents a complex system which is not completely neutral, as is, on the contrary, a VAT system.

San Marino is experiencing a gradual reduction of its '*monofase*' revenues, due to the reduction of internal consumption of goods, as well as to the slow-down of bilateral trades. In addition, within a context of falling volumes of trades, the share paid by the exporting companies of San Marino as difference between the *monofase* paid and the share refunded is also reduced. The reduction in revenues is also affected by, but not limited to, the Incentive Decree adopted by the Italian authorities. The difference is affected by other critical issues. The stop of the real estate market has led to a contraction of revenues resulting from the activities performed by the companies active in the building sector and the related industries. There are also significant reductions in the automotive sector and in the consumption of oil products. It is therefore necessary to recover the tax base and implement a system which would allow the distribution of taxes on all production and consumption contexts of San Marino.

In addition, several segments of the economy of San Marino operate above market price level. Although the *monofase* rate is lower than the VAT rate applied, for instance, in Italy, and even though services are tax exempt, the prices in San Marino are in line with, if not higher than, Italian prices. This causes a low competitiveness which is in conflict with a taxation that is certainly lower compared with that of the business partners of San Marino. In this transitional phase of the system of San Marino towards a new economic model, the indirect import taxation does no longer represent a tax system capable of fully satisfying the financial needs of the state budget. Also the International Monetary

Fund, in its analysis of the tax system of San Marino, notices that the absence of any VAT system is negatively affecting the stability of the public finances.

There are some difficulties at administrative management level for the Tax Office, linked, for instance, to the fulfilment of the formalities and the regulation of the documents for the payment of the tax, specifically as regards the marking of sale invoices (in case of transfer of assets by economic operators of San Marino towards economic operators or entities with VAT registration number) and for the return to the Italian VAT offices of the copies signed by the Tax Office in order for the VAT to be paid by the transferee in Italy. Furthermore, the abolition of the possibility to refer to the tax representative, except in case of transfers to private persons, entails additional delays in the fulfilment of the procedures by the Tax Office. In addition, several entities in San Marino continue to adopt voluntary practices which are not in line with the European invoicing rules, in so far as they elect to invoice with prepaid VAT to meet the requirements of the clients and avoid the assumption of tax fraud risks.

Finally, it is necessary to replace the system currently in place for disclosing the data on bilateral trade with Italy, the so called *listing,* with a statistic system which also includes the combined nomenclature, or with the INTRASTAT system, which would also solve the problem of the VAT payment upon custom clearance in the importing country. To this regard, the Memorandum of Understanding attached to the ECOFIN Agreement includes a declaration on whose base the European Union and San Marino are available to consult for the purpose of 'defining forms of simplification related to the procedures provided for in the Agreement on Cooperation and Customs Union. To this regard, San Marino is willing to adopt computerised procedures which might be similar to the INTRASTAT system'.

Within the context of the analysis of the opportunity to introduce an Added Value Tax system in San Marino in lieu of the existing indirect import taxation system, a brief comparison has been made first of all between the aspects of the *monofase* system currently in force and the implications resulting from the possible adoption of the VAT. The possible repercussions on the national system have then been taken into account.

The main differences between *monofase* taxation and VAT are outlined in the table.

VAT	MONOFASE
- Multiple phase tax - Applies to all the phases of the business process - Affects the trade of goods and the provision of services within the process for the formation of the value	- Single phase tax - Applies only to the import of the goods, or to the services provided, in the territory of the Republic by the economic operator - Several types of exchanges and services are exempt

Source: Analysis by the Department of Foreign Affairs

- **WHICH DIRECTION IS TO BE TAKEN?**

Towards the European Union

The accession to the European Union implies the adoption of the Community VAT system, which would entail:

- At a system level, the re-configuration of the bureaucratic-administrative competences of the Public Administration, such as the reorganisation of the Tax Office and the reorganisation of the procedures currently applied, and the investment in education, with the opportunity to follow the model of European best practices, since VAT represents a European harmonised system.
- The implementation of an effective control system against tax evasion and frauds.

- Inducing the harmonisation of direct taxation too (in line with the European trend).
- The adoption of invoicing rules which include the combined nomenclature, in compliance with the Community principles.
- The possibility to select the applicable rate, provided that it is included within the range specified by European directives and applying special or reduced rates for the product categories or the services mentioned in specific directives.

Probably, the shift to a VAT system could be completed in a relatively short time. As a matter of fact, the officers of certain departments, such as the Tax Office, have already acquired a certain knowledge of the VAT system, given that they are required to manage the bilateral trades with the countries in which the Community VAT is applicable.

What would the **implications** be?

- The tax base, resulting from the taxation of goods and services which were previously exempted, would be expanded; as a consequence, domestic tax revenues should increase, even though the final impact may not be determined until the system has become fully in force and effective.
- The system would be in line with that used by the major business partners of San Marino.
- The possible migration of European investors and operators would be simplified, given that a tax system would be in force which is equal to that applicable in their home country. The Authorities of San Marino still have the possibility to attract investments by selecting tax rates which are more favourable compared with that of other countries, to the extent permitted by the applicable European directives.
- The problem of the VAT advance payment in Community trading would be completely solved.
- It would be possible to adopt the INTRASTAT system, thus standardising bilateral trades and streamlining the bureaucratic procedures for the Tax Office.
- There would be a various impact on economic operators. As regards major companies, which are already active on the international markets, the VAT is completely neutral. Small companies, on the contrary, would encounter more difficulties, especially in adjusting their corporate accounting.
- Many bureaucratic complexities would be simplified or even solved (ascertainment of T2 customs documents, VAT advance payment, etc.).

There would also be some less positive impacts, such as:

- Consumers could perceive, both in practice and psychologically, an increase in prices which would discourage domestic consumptions. In fact, there should not be any increase in current prices given that they already include the *monofase*. On the contrary, the introduction of the VAT also on services would entail an increase in the final prices of the services[8].
- As regards the enterprises, many micro trades carried out with Italy, especially by small and medium enterprises, could prove difficult to settle. Specifically, if the extension of the tax base to the services segment occurs too fast, it would create a strain for the small craft businesses, especially those whose products are intended for internal consumption, since the shift to VAT would prejudice their competitive advantage. This is the reason why taxation on this economic sectors should be introduced on a gradual basis, with a gradual alignment to the European rates and other appropriate adjustments capable of avoiding any losses of jobs and wealth.
- The offices of the Public Administration competent for the bureaucratic management of tax files should face conversion/adjustment costs for the structures and for the education of their staff.

[8] Furthermore, it should be noted that with the approval of the Finance Law for 2011, a single phase at a rate of 3% has been introduced on the provision of services and self-employed work or similar, provided within the territory of San Marino and rendered, also through a permanent establishment, to private persons who are not economic operators, resident or not resident.

- The implementation of effective control systems would be required in order to prevent and prosecute frauds and tax evasions. To this regard, an appropriate culture should be fostered, starting from the administration down to the final consumer, capable of supporting the efforts towards tax transparency and good management.

Financing the EU Budget. It should be pointed out that in the event of accession to the EU, a standard rate (0.30%) of the VAT revenue would be devoted to financing the budget of the EU (although certain Member States – Austria, Germany, the Netherlands and Sweden – negotiated reduced rates). This contribution to the EU budget would entail a return in terms of opportunity to participate in several European programmes and funds which finance, inter alia, strategically important sectors such as culture, education, development, research and innovation (reference is made to horizontal policies).

Towards the European Economic Area

In the event of accession to the EEA, adopting the VAT would not be mandatory, given that indirect taxation is not covered by the Agreement. However, all EEA members that are non-EU countries already apply a type of taxation of added value that does not correspond to the Community VAT.

By virtue of the fact that the Community VAT is only applicable to the Member States of the EU which belong to the tax Community territory (whereas EEA countries are not part of such territories) the accession to the EEA would not solve the problem of the VAT advance payment in the trades between San Marino and the States of the EU. As regards the provision of services, for instance, since the Directive on services is applied in the EEA, but the Sixth VAT Directive is not, the principle for the taxation in the country where the service is rendered applies.

Non-EU countries that are members of the EEA are not part of the INTRASTAT system, which is an instrument for the statistical measurement on the trade of goods applicable only within the European tax territory. Therefore, it is comprised only by Member States.

Improving What We Are

The Agreement on Cooperation and Customs Union between San Marino and the EU does not govern the issue of taxation; therefore, any decision taken by San Marino on this matter might be taken regardless of the existing Agreement. In the event that San Marino decides to remain a third State with respect to both the EU and the EEA, there would be two possible scenarios concerning indirect taxation.

The first would be to maintain the existing *monofase* system. However, due to the critical issues described above, this choice would not be sustainable for long.

The second scenario would be to adopt VAT regardless of the accession to the EU or the EEA.

The possibility to adopt a VAT system equivalent to that of the EU, although maintaining the status of non-member country, would favour the adjustment of our tax system to that of the other European States, making it accessible by our trade partners, facilitating bilateral trades and fostering, in general, a greater integration with the Single Market.

What would the **implications** be?

- The 1972 Agreement between San Marino and Italy on bilateral trades should be reviewed in order to achieve a better and more efficient administrative cooperation, as well as the adoption

of procedures which are more streamlined than the current ones. Nevertheless, the status of San Marino and its citizens as non-member parties, would not be solved.

- On the contrary, it is possible that an evolution of the Agreement with Italy on bilateral trades, which currently provides for the *listing*, is proposed in order to create a sort of 'bilateral INTRASTAT' only as regards the trades with Italy. This would be only a partial solution, however, and not sufficient to solve the problems encountered by San Marino in trading with the EU.

- There could be higher tax revenues for San Marino, although this is rather difficult to quantify at the moment.

- There would be a various impact on economic operators. Major companies would not be negatively affected by the VAT, since VAT is a neutral tax for the production, whereas small craft businesses would be required to sustain the costs for adjustment, especially as regards the accounting system. The provision of services, now exempt from taxes, would be subject to taxation, but the gradual alignment of the rates could be established.

HORIZONTAL POLICIES OF THE EUROPEAN UNION

INTRODUCTION

In addition to the four fundamental freedoms, the European Union adopts a wide range of horizontal policies relevant for the good functioning of the internal market , which range from human rights to transports, from environmental protection to statistics, telecommunication etc. The EEA Agreement also provides for some flanking and horizontal policies, thus establishing cooperation in other important areas such as research and development, statistics, education, social policies, environment, consumer protection, tourism, small and medium enterprises, culture, information systems and the audiovisual sector. The EEA-EFTA States participate in the Community programmes related to such sectors and express their opinion within the Committees appointed to prepare the implementation of the programmes.

In light of the methodology adopted, the Working Group has not examined all the contexts mentioned. Instead, it focused on transport and public finance. Within the context of transports, the Community *acquis* includes road, sea, air transport and combined transport, State aids and satellite navigation. To this regard, it is worth noting that part of the *acquis* related to railway transport for San Marino is not applicable and that, due to time constraints, the part related to air transport has not been treated.

TRANSPORTS: WHAT IS THERE TO KNOW?

Transport policy is part of the matters in which the competence of the European Union is shared with that of the Member States, so that both the Union and the Member States may legislate and adopt legally binding acts. The European transport policy is aimed at reconciling the growing need for mobility of the citizens with a sustainable development. To this regard, it is also linked to the development of the internal market, to the opening to competitiveness and to the innovation and integration state of the networks. The issue of the safety and protection of users is also crucial for the transport industry.

Under many aspects, the transport policy is of national competence, but it is appropriate for the European Single Market to have one single transport infrastructure. Hence the EU decided to open the national transport markets to competition within its entire territory, especially in the road and air segments and, to a lesser extent, to the railway segment.

The main provisions of the European Union governing the specific context of transport are also implemented through the Agreement on the European Economic Area. Transport services, which are essential for the integration of the internal market of the European Economic Area, represent the subject matter of a specific common policy, which led to the gradual liberalisation of the markets as well as to the realisation of harmonised policies on the issue of protection, safety and rights of passengers.

INTERNATIONAL ROAD TRANSPORT: WHERE ARE WE?

San Marino has no problems in obtaining the necessary authorisations from the Member States of the European Union to carry out international transport of passengers and goods by road, provided appropriate prior notice is given. Nevertheless, there are some critical issues.

For instance, there is no regulation concerning the access to the profession of road haulier, with consequent limitations, for the operators of San Marino, to the exercise of the freedom of establishment and to the community license. Where no bilateral agreements are in place (such as with Italy and Austria), in the event of controls within the European area, the vehicles of San Marino which do not previously apply for the authorisation may incur in penalties. In addition, the authorisations to operate in the road hauling sector are granted by the Congress of State; therefore, it might be affirmed that access to the market is not free, since this business is controlled both in numbers and in operators.

Furthermore, some problems remain as regards the provision of passenger transport services under the regime of authorisation for the transit on the Community territory. With reference to this situation, it is necessary to mainly regulate the international occasional carriage of passengers by coach and bus, taking into consideration the European Interbus Agreement[9]. In providing liberalising measures in this sector, this Agreement does not only regulate the transport between the European Union and the non-EU countries which entered into the agreement, but also governs the transport between these non-EU countries, thus guaranteeing access to the market and creating a certain level of regulatory social, tax and technical harmonisation. Other problems are related to the taxation of transport services, since there is no VAT system in San Marino.

Other problems are connected with the implementation of the European standards, especially with reference to the adoption of uniform models for transport documents and for the authorisation in case of non-liberalised services, so as to facilitate inspections procedures.

Finally, people in charge of the management of transports are currently scattered in several offices, independent institutions and State Secretariats, and there is no state structure in charge of supervising the compliance with the European technical regulations and road safety rules.

WHICH DIRECTION IS TO BE TAKEN?

Towards the European Union

The technical Working Group has reviewed mainly the implications resulting from the accession of San Marino to the Interbus Agreement maintaining its status as non-EU country. Nevertheless, it is worth noting that in the event of accession to the European Union, the country would be required to implement the entire *acquis* on the issue of transport and thus to consider the necessary implications which might materialise in the following contexts in terms of:

- Legislative standardization as regards safety for all types of transport and the adjustment in sectors not yet covered by the laws of San Marino (including taxation).
- Competition and protection of passengers' rights.
- Involvement in financing programmes and Safety Committees.
- Restructuring of the businesses in order to sustain European competition.
- Organisation of one single transport management centre within the Public Administration.
- Adjustment of the internal authorisation procedure.

[9] The Interbus Agreement applies to the transport of passengers of any nationality by using coach and bus on the territory of the EU (including Bulgaria and Romania) and in Albania, Bosnia, Croatia, Macedonia, Moldova, Montenegro and Turkey.

- Regulation of public work contracts, considering that the European Union provides for the country to mandatorily call for a public tender for each purchase or construction which exceeds a given value.

As regards this scenario, the Country could get some benefits such as the liberalisation of the transport market and more investment opportunities, stimulated by the access to a larger market - consider for example the opening of homologation centres in the country by private European entities. As regards the disadvantages, greater competitive pressure is to be expected from the outside onto the national transport market.

Towards the European Economic Area

Since within the context of the Agreement on the European Economic Area transport policy is a key element for the free circulation of goods and persons, such aspects would not change if the country decided to follow this path.

Improving What We Are

The Interbus Agreement, related to the international occasional carriage of passengers by coach and bus, provides for the possibility for San Marino, Monaco and Andorra to enter the Agreement and replaces the bilateral agreements entered into between the contracting parties in this specific sector. The possible accession to Interbus would entail the implementation of the Community rules on this matter[10] and the request for an interpretative opinion from the European Union on the possibility to maintain in force the Agreement with Italy concerning the issue of international transport of goods and passengers, as well as the requirements to verify with Italy the possibility to keep the existing provisions. As for the expected benefits resulting from the possible accession to this Agreement, the operators of San Marino might be entitled to perform international occasional carriage of passengers without the authorisation of the other contracting members (Member States of the European Union and other non-member countries which entered the Agreement).

The alternative to the accession to the Interbus Agreement, adopting the measures for enhancing the existing scenario, is to enter into bilateral agreements. However, this solution might prove quite time consuming and there is no guarantee that the system of authorisations with the countries in question will be eliminated.

Regardless of the type of integration, it would in any case be appropriate to implement the Community regulations, specifically by using European transport documentation.

PUBLIC FINANCE: WHAT IS THERE TO KNOW?

In the European institutional set-up, the budget is a 'formal' regulatory act which provides for the adoption of a preliminary act which forms the legal basis of its action and of the implementation of the expenditure. Its adoption is thus subject to the compliance with a summary form of multiannual budget - the 'Multiannual Financial Framework' - which should determine the maximum annual amounts of commitment appropriations divided by cost category. Thus, the European Union has some

[10] The accession to the Interbus Agreement entails the simultaneous adoption of legal provisions similar to those of the Community on the access to the profession of road haulier. Therefore, it will be necessary to implement the provisions related to the mutual recognition of diplomas, certificates and other degrees, in order to facilitate the exercise of the freedom of establishment of said hauliers in the sector of national and international transport.

'own resources' available to finance its expenditures. Such resources belong to the Member States, which collect them in the name of the European Union and pay them to the Community budget. These are of three types:

- The resources based on gross national income, on the basis of a uniform percentage applied to each Member State. Today these resources are the most important form of financing and accounts for approximately 76% of overall revenues. The contributions paid by the Member States into the budget are proportional to their wealth. The principle for the calculation of the contribution of each Member State is that of solidarity and ability to pay, with appropriate adjustments in the event that such payment proves to be an excessive burden for some Member States.

- The 'traditional own resources', which essentially consist in excise duties collected on the import of goods from non-member countries. They correspond to 12% of total revenues.

- The resources based on the value added tax (VAT), which represent 11% of total revenues, namely about 14 billion euros.

The budget of the Union is also funded with other revenues, such as taxes paid by the employees of the European Union on their income, the contributions of non-member countries to certain Community programmes and the fines imposed to the enterprises which violate the rules on competitions or any other regulations.

The budget of the Union finances actions and projects in sectors in which the Member States have decided to act at a Community level in a given moment in history. However, there are certain contexts in which the Union decided not to act at a Community level. This is the case, for instance, of social security, pensions, healthcare and education systems which come under the competence of national, regional or local governments. Over the coming years, the countries of the European Union shall devote part of their common efforts and of the Community budget to the increase in the economic growth and to the creation of jobs. Durable growth represents one of the main priorities of the European Union in the immediate future.

If, on one hand, Member States are required to ensure payment of the expenditures provided in the Community budget, they are required on the other hand to get aligned with the Community standards on debit and inflation - price stability and monitoring of interest rate - and to pursue a strict internal budget policy which would make it possible to avoid excessive deficit that might seriously destabilise the European economic policy and jeopardise the results achieved in the European integration. The financial difficulties of one Member State may in fact represent a serious threat to the financial stability of the EU as a whole. To this regard, the Union established a European mechanism of financial support, capable of supporting Member States in difficulty and maintaining the general financial stability.

The financial support structure of the European Union provides for 5 main types of intervention: Pre-accession assistance, external assistance, regional assistance, natural resources and programmes of the Community.

It should be borne in mind that EEA countries indirectly contribute to the budget of the EU in exchange for their participation in Community programmes and agencies. It is also for this reason that they are allowed to participate in all the Community financing programmes, provided that they must be able to finance them directly. The EEA-EFTA States participate in some institutions and agencies created by the European Union with the purpose of realising and applying the Community regulations and in certain executive agencies which are entrusted with the completion of some tasks regarding the management of the Programmes of the Union, under the supervision and responsibility of the European Commission.

In addition, there are several sources of financing which do not involve the European Union directly, i.e. they are included neither in the Community financial structure nor in the budget of the Union. These sources of financing include, but are not limited to, the Anna Lindh Euro-Mediterranean Foundation for the dialogue between cultures, the Asia-Europe Foundation, the Eurimage programme of the Council of Europe, and the financing mechanism of the European Economic Area, which has its legal basis in a specific protocol of the Agreement.

WHAT DOES THE DECISION TO TAKE ONE DIRECTION OR THE OTHER ENTAIL?

Towards the European Union

It shall be considered that, at the moment, San Marino has not adopted any VAT system yet and it is thus difficult to make exact calculations. However, in the event that San Marino accesses the European Union, it is estimated that the payment of own resources to the budget of the EU for 2009 would have been equal to approximately 9 million euros.

In exchange, the country would be guaranteed the participation in many programmes and agencies of the European Union, for which it would receive significant amounts of money which, at the moment, may not be assessed more precisely. The country would also be able to take part, at the same conditions applicable to the other Member States, in the decision-making process provided by the Union.

On the other hand, the country would be required to adopt the surveillance criteria for public finance provided for by the European Union.

Towards the European Economic Area

EEA member countries participate in many of the most important Community programmes, but not in all of them. They do not contribute directly to the budget of the Union, but they finance it indirectly through the annual contributions offered in exchange for their participation in the Community programmes of financial support. In addition, they do not participate directly in the decisions of the European Union regarding the financing of projects and programmes of financial support. They are possibly allowed to negotiate within the competent EU-EEA joint bodies the share payable as contribution for their participation.

In this case, it would not be mandatory for the country to incorporate the provisions which regulate Community standards on debt, inflation and monitoring of interest rates.

Even though there are no accurate estimates of the cost of a possible accession of San Marino to the EEA, it is possible to refer to the Liechtenstein experience. On the basis of the information available, its financial participation in the functioning of the EEA for 2009 was equal to approximately 4.5 million euros, which include, in addition to the contribute to the programmes, also the participation in the EU-EEA joint institutions and the EFTA Surveillance Authority. EFTA Secretariat, located in Geneva, Luxembourg and Brussels, is in charge of also the EEA Agreement. For 2010, according to the data gathered, Liechtenstein contributed with 207,000 CHF (approximately 150,000 euro).

In addition, it is worth noting that, besides these expenses resulting from the financing of the Community programmes and the functioning of the EFTA Secretariat, EEA countries must pay for the participation in the subsidies aiming at reducing economic and social inequalities and promoting cooperation within the EU. For the 2004-2009 period, subsidies were granted for financing 1,250

individual projects, programmes and funds in Central and Southern Europe. During the same period, for instance, Liechtenstein paid an amount equal to 5,567,200 euros.

CASE STUDIES

INTRODUCTION

Regardless of the path towards European integration selected by San Marino, the State will necessarily be required to invest in its human resources, taking into account both the required representation with the European institutions and the restructuring and strengthening of the structures of the Public Administration of San Marino.

To this regard, it is difficult to make an accurate estimate. However, it could prove useful to gather information about the real experience of some European States that, on one side, have features - such as population and territory - which are comparable with those of San Marino and, on the other side, have already decided for the integration with Europe, either within the European Economic Area (Liechtenstein) or within the European Union (Malta and Cyprus) or which are negotiating with the European Union (Iceland).

Finally, for the purposes of the completeness of the analysis, the possibility to request and obtain extensions in the implementation of certain chapters of the Community *acquis* should not be underestimated. During the subsequent enlargements of the EU, for instance, several exceptions have been negotiated as regards the free movement of capital, especially concerning the purchase of holiday homes or agricultural land.

Apart from the permanent derogations which may be negotiated, it is worth noting that, within the framework of the last two enlargements (2004-2007) transitional provisions were applied regarding the implementation of the chapter on the free movement of people, in order to allow a gradual liberalisation of the labour markets, thus avoiding any difficulties in managing the migration flows from the new Member States or in absorbing labour force, and also in order to avoid any excessive competitive pressure on local labour markets.

For a transitional period of up to 7 years after the accession of 10 Member States on 1 May 2004 (EU-10)[11] and of 2 Member States on 1 January 2007[12] (EU-2), it is possible to apply some temporary provisions which restrict the free movement of workers from, to and between such Members States. These restrictions are related to free movement for the only purpose of finding a job and may vary from one Member State to another.

Therefore, it may be inferred that, in the event of a further enlargement, new transitional provisions might be applied. At the same time, the new Member States could request to negotiate specific derogations on the chapters related to the free movement of people and workers and to social policies, given that these three contexts are strictly linked to each other.

[11] Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia.
[12] Bulgaria, Romania.

CYPRUS

Population	689,656 (pop. cens. 2001); 1,102,677 (estimate July 2010)
Territory	5,896 sq. km
GDP	24,943 ml $ USA (2008)
GDP/inhab.	32,722 $ USA (2008)
Source: Atlas Calendar De Agostini 2010; CIA – The World Factbook	

Derogations

Upon accession to the European Union and within the framework of the subsequent enlargement (2007), no temporary provision is applicable for Cyprus. Other derogations made by this country refer to, for example, fishery, but this is a chapter of the *acquis* which does not fall within the scope of our survey on the four fundamental freedoms.

How Were the Negotiations Conducted

The Office of the Chief Negotiator for the Negotiations for the Accession of Cyprus to the EU has been created for the purpose of conducting the accession negotiations, chaired by the former President of the Republic, supported by a team of persons and consultants from certain Ministries (Cyprus has not availed itself of any external advisors and/or experts).

The Development Office, comprised of over 30 legal experts, was the department entrusted with the technical coordination of the preparation and conduction of the accession negotiations, and with the harmonisation of Cyprus laws and regulations in all sectors of the Community *acquis* (during the pre-accession phase, 1,080 laws and regulations were prepared and approved). A Directorate for European Affairs and relations with the EU was created within the Ministry of Foreign Affairs and was gradually expanded later. During the entire negotiation process, intense contacts were maintained with the civil society and, in particular, with trade unions and local authorities, and information centres were created with the support of the European Union.

The accession process stimulated the restructuring and modernisation of a significant part of the government apparatus, as well as the change in attitude within the different departments. Besides the necessary system coordination, integration and cooperation activities, the simplification and the efforts to eliminate any overlapping of competences between offices also played a key role.

Hundreds of State officials from all Ministries were involved in the negotiations process and in the activities thereby contemplated. In addition, a special department was established within the Chamber of Representatives.

The EU provided for all advice and expertise required free of charge, and the country also received advise and technical support by Greek officials during meeting and seminars organised both in Cyprus and in Greece.

Participation in the European Bodies

As regards the Mission to the EU, its staff is comprised of 90 people. This represents an increase of 350% compared with the officials employed there prior to the accession.

Accession Costs

Unlike the other nine candidates[13] Cyprus has not received any significant financial support from the Commission during the pre-accession phase, due to its high economic indices. Consequently, the costs resulting from the accession negotiations were borne almost entirely by Cyprus: Several tens of millions of euros.

Duration of the Negotiations

Five years, from March 1998 to December 2002.

MALTA

Population	404,962 (pop. cens. 2005); 406,771 (estimate July 2010)
Territory	315.6 sq. km
GDP	8,338 million $ USA (2007)
GDP/inhab.	20,202 $ USA (2008)
Source: Atlas Calendar De Agostini 2010; CIA – The World Factbook	

An association Agreement between Malta and the EEC has been in place since 1970. The first official application for accession to the EU by the authorities of Malta dates back to 1990, under the conservative government. Afterwards, the Labour government withdrew the application, which was then submitted again in 1998. Previously, Malta also considered to apply for accession to the EEA, but the conclusions indicated that there were many requirements and only a few benefits, and so Malta opted to apply for accession to the EU. The expectations of the country as regards accession mainly regarded a greater integration in the European economy, also taking into account the fact that Malta would have then had access to the structural funds, which made it possible to realise new infrastructures on its territory.

Derogations

Malta was granted a 7-year derogation concerning the free movement of workers and a permanent derogation for the purchase of houses by non resident citizens, who may not purchase a house unless they have been residing in the country for at least 5 years.

Malta is able to monitor the movements of workers also by maintaining the work permit system in force, in order to keep the national market under control. If necessary, under exceptional and pressing circumstances, the country could discontinue the application of the *acquis* and impose unilateral restrictions. At the end of the 7-year period, in case of an excessive inflow of EU workers, Malta undertakes to find a solution referring directly to the European institutions this time, rather than unilaterally.

[13] Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

For Malta, the most difficult aspect to be adapted to the European Treaties was its position as a neutral country.

How Were the Negotiations Conducted

The Cabinet of Ministers was responsible for the general coordination for the adoption of the *acquis* and the relevant legislation. It also decided on the general negotiating positions of the country. The Prime Minister established a *Cabinet Committee for European Affairs* under his chairmanship, comprised of the Minister of Finance, the Minister of Foreign Affairs and the Chief Negotiator.

Besides its President (Chief Negotiator), the *Group in charge of the Negotiations* was comprised of the Head of Malta Mission to the EU, the Chief of the EU Directorate of the Ministry of Foreign Affairs and the Chief of the Secretariat of EU Negotiations. In addition, officials in charge of specific issues were invited to attend from time to time. The Chief of the Secretariat of the Prime Minister was appointed *Chief Negotiator*.

The *Ministry of Foreign Affairs*, within which a EU Directorate was created, was given the responsibility to conduct the negotiations and to act as interface with the civil society and the other parties involved.

In 1988, Malta started a complete review of the services of the Public Administration, with the purpose of examining the role, organisation and operation of the entire government apparatus. The debate within the Maltese society on the accession to the EU has been very animated, since the Labour Party was firmly against such accession from the very beginning. The *Malta-EU Steering and Action Committee (MEUSAC)* was created with the purpose of monitoring the negotiations. It was comprised of representatives of NGOs, Trade Unions and trade associations.

Participation in the European Bodies

The Mission in Brussels was considerably developed, passing from the 5 officials employed prior to the accession application, to the current 45 officials, plus secretarial staff.

Accession Costs

Malta has obtained a pre-accession financial package for the 2000-2004 period which corresponded to the highest per capita financing among all candidate Countries. As regards post-accession funds for the years 2004-2006, Malta was penalised in more than one way by the low number and weighing of population, the small dimensions of its territory, a relative high per capita GDP and the limited right of access to the agricultural funds.

Duration of the Negotiations

As mentioned above, in 1998 the Conservative Party reactivated the application for the accession of Malta and at the EU Summit held in Helsinki it was decided to officially start the negotiations with Malta and other 4 Countries. The Malta-EU Steering and Action Committee (MEUSAC) was created with the purpose of monitoring the negotiations. In February 2000 the negotiations finally started. At the end of the same year, 12 chapters of the Community *acquis* were completed, but only in 2002 an agreement was reached on the most complex dossiers, such as environment, competition and agriculture. Before starting the negotiations the Government of Malta undertook to take a referendum at the end of the negotiations. This referendum was held on 8 March 2003 and confirmed the desire of the people of Malta to be part of the European Union. Malta, together with other 9 countries, entered the EU on 1 May 2004.

ACCESSION TO THE EEA: THE LIECHTENSTEIN EXPERIENCE

Population	33,307 (pop. cens. 2000); 35,002 (estimate July 2010)
Territory	160.5 sq. km
GDP	4,160 million $ USA (2007)
GDP/inhab.	118,040 $ USA (2008)
Source: Atlas Calendar De Agostini 2010; CIA – The World Factbook	

Liechtenstein initiated the debate on a possible accession to the EEA at the beginning of the 90s. The political discussion and the preparation to the accession took place in parallel with those held in Switzerland, since Liechtenstein has a customs union together with this country and saw the EEA as an evolution of said customs union and of the participation (common to both Countries) in the EFTA. The Government and the industrial sector were in favour of the accession, whereas the financial sector and the lawyers were rather against it. Finally, the accession was confirmed with the Parliament's vote in favour and two subsequent confirmatory referendums, in both cases with rather high percentages in favour (56%). Accession took place on 1 May 1995.

Derogations

Within the framework of the accession to the EEA, Liechtenstein was granted a transition period after which better opportunities were provided in favour of EEA citizens to establish their domicile. These provisions regarded the free movement of people and provided for the prior authorisation of the entry, residence and work. They also maintained quantitative limits for new residents, seasonal workers and frontier workers and ensured restrictions to the professional mobility and to the access to the professions for all categories of workers. The country has also implemented measures in the field of social security related to the transitional periods in the free movement of people.

At the end of the transitional period, Liechtenstein was allowed to maintain in force measures aiming at restricting the possibility to establish in the country. By virtue of these changes, Liechtenstein releases an annual maximum share of permits. The procedures for the release of such permits are regulated by law and are related to two systems: Direct issuance or balloting, through which residence is granted to a certain number of economically active and non-active people.

Each year, 28 residence permits are available for EEA economically active citizens. In case of an excess in applications, Liechtenstein has no obligation to issue additional permits. For economically non-active EEA citizens there are 8 residence permits available every year. No exceptions are provided for by law outside the envisaged share. The Government, however, is free to release additional residence permits.

As regards the movement of capital, the existing agreements entered into by Liechtenstein contain broad derogations to the principles of freedom of the single market, with reference to specific nationalities[14].

How Were the Negotiations Conducted

[14] In Annex XII to article 40 of the EEA Agreement, it is provided that Liechtenstein may continue to apply its internal laws and regulations governing foreign ownership and/or ownership of non residents as regards direct investments and real estate investments on the national territory.

At the beginning of the negotiations a Working Group was created, comprised of members of the Cabinet of the Prime Minister, the Legal Service, the Ministry of Foreign Affairs and the Ministry of Economy. These persons were taken from the administration and, in case no competent staff was available, officials of the Foreign Ministry were appointed.

Initially, the Foreign Ministry was responsible for the coordination between the different Ministries and the Public Administration. This experience was subsequently transferred to the EEA Coordination Unit, created *ex novo* within the Office of the Prime Minister.

Since 1988, in order to initiate the adjustment to the Community *acquis*, the Government of Liechtenstein asked some external experts to verify the compliance of the domestic legislation with the *acquis* in certain sectors, such as the free movement of workers and the banking and insurance sector. From time to time, the Government has been assisted by several university institutions which provided a detailed analysis on specific issues in the form of expert opinions. Afterwards, for the purpose of ensuring the capability to assess in depth the compliance of the domestic laws with Community laws, the competent bodies decided to employ experts of Community Laws. This was possible from the beginning, given that two officials had already been trained on this matter at the *College of Europe* in Bruges and at the Free University of Brussels (ULB).

People were informed about the EEA in different ways, from brochures to leaflets on specific issues such as the movement of goods; in addition, important texts and speeches of the members of the Government and of the members of the negotiations delegation were gathered.

The responsibility for the political management of the EEA Agreement currently comes under the bureau of the Prime Minister, with which the EEA Coordination Unit has been established. Approximately 82 officials from different Ministries regularly take care of the fulfilment of the EEA Agreement, 25 of whom on a daily basis. It is estimated that 45 additional persons are engaged, in different ways, in matters connected to the EEA.

Participation in the European Bodies

The Mission in Brussels is responsible for the evolution of the issues forming the subject matter of the EEA Agreement and of the European Policies, reporting to the Minister of Foreign Affairs. The Mission attends to the EU and EEA committees, conducts negotiations and, more in general, maintains the contacts with EU and EFTA counterparts. It is comprised of the Ambassador, 3 diplomatic officials, and 2 secretaries.

A Committee responsible for the EEA legislative acts which require a change in the domestic laws and regulations has been established in the framework of the National Parliament.

Thanks to the coordination system adopted internally, the Country achieves a percentage of implementation of the European regulatory acts of approximately 100%.

Accession Costs

The financial contribution of Liechtenstein to the EEA in 2009 was equal to approximately 4.5 million euros, which includes the participation in the programmes, the financing of the institutions and of the Surveillance Authority, etc.

FROM EEA TO THE EUROPEAN UNION: THE CASE OF ICELAND

Population	281,154 (pop. cens. 2000); 308,910 (estimate July 2010)
Territory	102,819 sq. km
GDP	17,549 million $ USA (2007)
GDP/inhab.	55,462 $ USA (2008)
Source: Atlas Calendar De Agostini 2010; CIA – The World Factbook	

The country is a member of EFTA since 1970 and a member of the European Economic Area since 1994. In 2001 it became a member of the Schengen Area, which means that, in aggregate, Iceland has already adopted 22 chapters of the Community *acquis*. On 16 July 2009, Iceland officially submitted its application to the European Union. The economic-financial crisis which affected the country at the end of 2008 has been the main reason why the Icelandic Government took this important decision. On 24 February 2010 the Commission recommended to the Member States to start the accession negotiations with Iceland. The greatest hurdle, according to the Commission, will be the implementation of the *acquis* in the fishery, agricultural and rural development sectors. In addition, the Commission expressed some doubts about the independence of the judicial authorities (procedure for the appointment of magistrates by the political power). On 27 July 2010 the accession negotiations were officially started.

Derogations

The Icelandic Parliament has decided that the transitional agreement on the free movement of people, which has been in force since 1 May 2004 and is related to the new EU Member States, will not be extended. As from 1 May 2006, the citizens coming from the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia and Hungary will thus be allowed to enter Iceland looking for a job without being required to hold a special work permit.
The employers that employ foreign citizens in Iceland coming from any of these countries have the duty to inform the Labour Directorate, submitting a copy of the work contract and providing the relevant information concerning the worker.

A person coming from a EU-EEA country may stay and work in Iceland without any special permit up to a maximum of 3 months from the arrival in the country, or up to a maximum of 6 months if he/she is looking for a job. If the person stays longer, he/she will have to be entered into the National Register. Residence in another Nordic Country may not be deducted from the residence period.

The citizens of non-EEA countries who are relatives of a EEA citizen must file an application to get a residence card with the Directorate of Immigrations not later than 3 months after their arrival in Iceland. All EU-EEA citizens are free to start a business in Iceland.

How is the Negotiations Being Conducted

The negotiations for the accession to the EU come under the constitutional responsibility of the Ministry of Foreign Affairs. The process, however, sees the participation of the entire public administration. All Icelandic Ministries are involved in the accession process.

The negotiations are structured in a way that let the final decisions come under the responsibility of the Government. The Negotiation Committee holds the responsibility. It is appointed by the Minister of

Foreign Affairs and is led by a Chief Negotiator - the Chief of Icelandic Mission to the EU. As regards the Ministry of Foreign Affairs, it created five Departments for the accession to the EU within the Directorate for Foreign Trade and Economic Affairs, each one of which deals with certain specific chapters of the *acquis*.

The Icelandic Government has underlined the importance for the different parties interested in the process for the accession to the EU to grant their wide participation. All the parties from time to time involved in specific issues such as fishery, rural development, etc. will thus be involved and their 'regular' members will be supported by the local authorities and/or different groups of interest, which will be actively involved in the negotiations.

Participation in the Community Bodies

The staff of the Icelandic Mission to the European Union is currently comprised of approximately fifteen diplomats, each one of whom is assigned one or more tasks. The number of diplomats is virtually unchanged from the period prior to the submission of the application, since, being an EEA member, Iceland already deals with multiple subjects.

Costs for the Accession to the European Union

As regards the costs related to the accession process, they totalled, for the Ministry of Foreign Affairs alone, approximately 800,000,000 ISK (approx. 5,300,000 euros) for the period 2010-2012. In any case, it should be borne in mind that part of this amount (no percentage has been reported by the Icelandic authorities) will be devoted to the translation in Icelandic of the Community laws and regulations which are not part of the EEA *acquis*. As regards San Marino, there would be no translation costs, since Italian is already one of the official languages of the EU.

Furthermore, it was estimated that additional 100,000,000 ISK (approx. 670,000 euros) will be required for the other Ministries and institutions involved in the negotiations, for travel and accommodation expenses, external consultancies, etc. Of course, these estimates may vary according to the length of the negotiations.

CONCLUSIONS

Although the analysis carried out by the Working Group on the European integration focused only on certain issues, namely those which represent the core of the Single Market on which the European integration project is based, the work has made it possible to infer some general considerations and other elements of a more practical nature, which are listed hereafter:

- In the initial phase of the work, the various persons involved had no systematic knowledge of the European Union, since there had been no previous organised approach to European issues. To this regard, discussions and communications made it possible to create a set of knowledge shared by the members of the Group, both on the situation of the country and on the Community *acquis*.

- Thanks to the contribution offered by the operators and the remarks coming from the trade associations, professional bodies, economic-productive sectors and banking and financial sectors, the distance between the laws and regulations of San Marino and the Community *acquis* was identified. Some inefficiencies/lacks of the country-system emerged and the sectors suffering the greatest impact and needing greater opening, etc. were identified.

- However, the Group ascertained that the relations with the EU do not start from the very beginning, because some integration elements already exist, such as the Customs Union, the Cooperation Agreement, the ECOFIN Agreement and the Monetary Agreement.

- It was also ascertained that for certain aspects, such as tax-related aspects, immediate consideration is required, regardless of the integration path selected.

- In parallel, the Group investigated on the internal needs for a structural reform of the Public Administration and the education, re-qualification and orientation of public officials.

- There are several contexts in which a voluntary harmonisation of laws and regulations to the principles of the EU is required, in order to be able to continue to operate in a context which is provided with common rules and in which San Marino is already deeply integrated.

According to the Working Group, having adopted a new model of development based on the transparency and modernisation of its internal structures, the country could take some actions in the short term, at an internal level as well as bilaterally (through bilateral agreements, better communication, potential activation of the Cooperation Committee) such as:

- As regards the relations with the EU, make a better use of the existing Cooperation Agreement in order to fill the gap in certain contexts.

- Reconvert the existing structures of the Public Administration, enhance human resources, train staff on European issues and re-design the offices so that they will be able to face their current tasks from a European perspective.

- Foster the education of the operating staff on European issues and orientate the young generations towards those professions which might be required in the future.

- Expand the Mission of San Marino in Brussels.

- Maintain a dialogue with trade associations and professionals.

- Ensure the dialogue and coordination with the other small States, even though each one of them has its peculiar and different features.

In the hope that the conclusions presented could be of assistance to the political environment, the Group believes that a greater integration within the European context - advocated by everyone - will be reached through wise and forward-looking negotiations. It is also for this reason that the assessment on the opportunity by San Marino will necessarily take into account the orientation of the Community Institutions and of the Member States as regards the integration of micro-States.

Information on the European Union (available in all EU languages)

http://europa.eu.int

Information on the European Economic Area

http://www.efta.int/eea.aspx

Other websites with information on case studies

Integration Office of the Federal Department of Foreign Affairs of Switzerland (http://www.europa.admin.ch/aktuell/index.html?lang=it)

Ministry for Foreign Affairs of Iceland (http://www.mfa.is)

Ministry of Foreign Affairs and European Integration of Montenegro (http://www.mip.gov.me/en/)

Ministry of Foreign Affairs of Andorra (http://www.dfa.ie/home/index.aspx?id=395)

Ministry of Foreign Affairs of the Republic of Cyprus (http://www.mfa.gov.cy/mfa/mfa2006.nsf/index_en/index_en?OpenDocument)

Ministry of Foreign Affairs of Malta (http://www.foreign.gov.mt/)