



REPUBLIC OF SAN MARINO

DECREE-LAW no. 21 of 27 February 2014

(Ratification of Decree-Law no. 164 of 5 December 2013)

We the Captains Regent of the Most Serene Republic of San Marino

Having regard to promulgated Decree-Law no. 164 of 5 December 2013 - "Provisions concerning cooperation in asset recovery in the field of tracing and identification of proceeds from, or other property related to, crime";

Having regard to the conditions of need and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and Article 12 of Qualified Law no. 184 of 15 December 2005 and more precisely:

- *the need to implement the commitments undertaken by ratifying the Monetary Convention between the Republic of San Marino and the European Union, signed in Brussels on 27 March 2012, through Parliamentary Decree no. 120 of 7 August 2012, annex A of which provides, inter alia, for the transposition of Council Decision 2007/845/JHA;*
- *the urgency of promptly aligning San Marino legislation with the legal provisions of the European Union contained in the above-mentioned annex;*

Having regard to Congress of State Decision no. 18, adopted during its sitting of 3 December 2013;

Having regard to the amendments to the above-mentioned Decree, which were introduced at the time of its ratification by the Great and General Council in its sitting of 25 February 2014;

Having seen the Decision of the Great and General Council no. 14 of 25 February 2014,

Having regard to Articles 8 and 9, paragraph 5, of Qualified Law no. 186/2005;

promulgate and order the publication of the final text of Decree-Law no. 164 of 5 December 2013, as results from the amendments approved by the Great and General Council when ratifying it:

PROVISIONS CONCERNING COOPERATION IN ASSET RECOVERY IN THE FIELD OF TRACING AND IDENTIFICATION OF PROCEEDS FROM, OR OTHER PROPERTY RELATED TO, CRIME

Art. 1

(Asset Recovery Office)

1. For the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property, the National Central Bureau of Interpol shall perform the functions of Asset Recovery Office in the Republic of San Marino.

2. For the purposes of paragraph 1 above, the National Central Bureau of Interpol shall be entrusted with the functions of:

- a) identifying assets or funds referred to in Article 1, paragraph 1, letter e) of Law n. 92 of 17 June 2008, held by the financial parties specified in Article 18 of the same Law, and other assets or funds present in the Republic of San Marino;
- b) carrying out the appropriate actions to trace, identify and locate proceeds deriving from criminal activity and other property or funds directly or indirectly relating to offences that may be subject to a freezing, seizure or confiscation order issued by a competent judicial authority; and
- c) cooperating with foreign authorities performing the same functions as Asset Recovery Offices.

Art. 2

(Cooperation between Offices)

1. The National Central Bureau of Interpol shall cooperate by exchanging information, upon request or spontaneously, with foreign authorities performing the same functions.

2. Information and intelligence may be requested for the purpose of detection, prevention or investigation of an offence where there are factual reasons to believe that relevant information may be available in the other State.

Art. 3

(Exchange of information between Asset Recovery Offices on request)

1. For the purposes of this Decree Law, exchange of information on request between the National Central Bureau of Interpol and an Asset Recovery Office of another State shall be carried out by using the forms contained in Annexes A and B to this Decree Law.

2. When filling out the form provided for in Annex B, the requesting Asset Recovery Office shall specify the object of and the reasons for the request, as well as the nature of the proceedings. It shall also provide details, as precise as possible, on property targeted or sought and/or the natural or legal persons presumed to be involved.

Art. 4

(Spontaneous exchange of information between Asset Recovery Offices)

1. The National Central Bureau of Interpol may exchange, also spontaneously, information with another Asset Recovery where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention or investigation of offences referred to in Article 2, paragraph 2) of Framework Decision 2002/584/JHA of the Council of the European Union, to the extent to what is deemed relevant and necessary for the successful detection, prevention or investigation of the crime or criminal activity.

Art. 5

(Time limits for provision of information)

1. The National Central Bureau of Interpol shall respond within eight hours to urgent requests for information regarding offences referred to in Article 2, paragraph 2) of Framework Decision 2002/584/JHA of the Council of the European Union, when the requested information is held in a database directly accessible by the National Central Bureau of Interpol.

2. If the National Central Bureau of Interpol is unable to respond within eight hours, it shall provide reasons for that on the form contained in Annex A. Where the provision of the information requested within the period of eight hours would put a disproportionate burden on the National Central Bureau of Interpol, it may postpone the provision of the information. In that case, the National Central Bureau of Interpol shall immediately inform the requesting authority of this postponement and shall provide the requested information as soon as possible, but not later than within three days.

3. For non-urgent cases, the National Central Bureau of Interpol shall respond within one week to requests for information regarding offences referred to in Article 2, paragraph 2) of Framework Decision 2002/584/JHA of the Council of the European Union, when the requested information is held in a database directly accessible by the National Central Bureau of Interpol. If the National Central Bureau of Interpol is unable to respond within one week, it shall provide reasons for that on the form contained in Annex A.

4. In all other cases, the National Central Bureau of Interpol shall communicate the requested information within 14 days. If the National Central Bureau of Interpol is unable to respond within 14 days, it shall provide reasons for that on the form contained in Annex A.

Art. 6

Confidentiality.

1. All data and information exchanged under this Decree-Law shall be covered by official secrecy, also vis-à-vis Public Administrations. Official secrecy cannot be invoked against the criminal judicial Authority.

2. The National Central Bureau of Interpol shall implement, also through the use of computer tools, measures ensuring that the data and information acquired cannot be accessed by third parties.

3. Exchange of information may take place via any existing channels for international cooperation.

4. Information exchanged shall be used only for the purposes set forth in this Decree-Law, shall not be used as evidence before a judicial authority and shall not be transmitted to third parties without the prior written consent of the National Central Bureau of Interpol.

Art. 7

(Best practices)

1. The National Central Bureau of Interpol shall cooperate with foreign asset recovery offices, also by exchanging information, with regard to the best practices to be adopted to improve the effectiveness of States' efforts in tracing and identifying proceeds from, and other property related to, crime which may become the object of a freezing, seizure or confiscation order by a competent judicial authority.

Art. 8

(Relationship to existing arrangements for cooperation)

1. This Decree-Law shall be without prejudice to the Republic's obligations resulting from international instruments on mutual legal assistance or on mutual recognition of decisions regarding criminal matters, from bilateral or multilateral agreements or arrangements between States on mutual legal assistance.

Art. 9

(Reasons to withhold information)

1. The National Central Bureau of Interpol may refuse to provide information on the basis of one or more reasons expressly indicated in Article 10 of the Framework Decision 2006/960/JHA of the Council of the European Union or in Annex A to this Decree-Law.

Art. 10
(Notification)

1. Within 10 days following the entry into force of this Decree-Law, the Department of Foreign Affairs shall notify, in writing, through diplomatic channels, to the General Secretariat of the Council and to the European Commission, the authority designated as national Asset Recovery Office, as well as any subsequent changes.

Done at Our Residence, this 27 February 2014/1713 since the Foundation of the Republic

THE CAPTAINS REGENT
Gian Carlo Capicchioni - Anna Maria Muccioli

THE MINISTER
OF INTERNAL AFFAIRS
Gian Carlo Venturini