REPUBLIC OF SAN MARINO

DECREE – LAW no. 59 of 7 April 2022

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

Having regard to the conditions of necessity 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 apply the restrictive Measures established by the European Union for the purpose of implementing the Decision and the Regulation in question in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine in order to avoid potential commercial transactions contrary to these restrictive measures and in compliance with the commitments undertaken by the Republic of San Marino with Decree - Law no. 41 of 22 March 2022 "Actions to ensure international peace and security and extraordinary and temporary introduction of the provisional stay permit for the Ukrainian emergency";*
- *the urgency of ensuring the timely imposition of the above-mentioned restrictive measures and, therefore, their prompt effectiveness in view of the current Russian-Ukrainian conflict scenario and the threat to international peace and security;*

Having regard to Congress of State Decision no. 5, adopted during its sitting of 4 April 2022;
Having regard to Article 5, paragraph 2 of Constitutional Law no. 185/2005 and to Article 9, paragraph 1, and Article 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Decree-Law:

COMMERCIAL RESTRICTIVE MEASURES IMPLEMENTING EU DECISION 2014/512/CFSP OF THE COUNCIL OF THE EUROPEAN UNION AND SUBSEQUENT AMENDMENTS AND COUNCIL REGULATION (EU) NO. 833/2014 OF 31 JULY 2014 AND SUBSEQUENT AMENDMENTS

TITLE I
GENERAL PROVISIONS

Art. 1
(Definitions)

1. For the purpose of this decree - law the following definitions shall apply:
a) "*Civil Aviation, Maritime Navigation and Homologation Authority*" shall mean the Authority referred to in Law No. 125 of 29 July 2014, and subsequent amendments;
b) "*Technical assistance*" shall mean any technical support related to repair, enhancement, manufacture, assembly, testing, maintenance, or any other technical service, which in particular may take the form of:

instructions, opinions, training, transmission of knowledge on the functioning or of skills or advisory services, including oral forms of assistance;

c) "*Dual-use goods and technology*" or "*dual-use goods*" shall mean the items listed in Annex I to Regulation (EU) no. 2021/821 and subsequent amendments;

d) "*CRM*" shall mean the Committee for Restrictive Measures referred to in Law no. 57 of 29 March 2019, and subsequent amendments;

e) "*Decision*" shall mean Council of the European Union Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine;

f) "*Finance Department*" or "*FD*" shall mean the Department responsible for granting, by way of derogation, the authorisations referred to in this Decree-Law through its Director or specifically delegated official;

g) "*Regulation*" shall mean Regulation (EU) no. 833/2014 of the Council of the European Union of 31 July 2014 and subsequent amendments concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine;

h) "*Brokering Services*" shall mean the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of technical services, including from another country to another country, or the selling or buying of goods and technology or of technical services, including where they are located in other countries for their transfer to another country;

i) "*Associating States*" shall mean a Member State of the European Union or of the European Economic Area, the Principalities of Andorra and Monaco as States participating with the Republic of San Marino in the process of association to the European Union;

j) "*Tax Office*" or "*TO*" shall mean the Office of the Public Administration responsible for imposing the administrative sanctions referred to in this Decree-Law.

Art. 2

(Purpose and scope of application)

1. In compliance with the commitments undertaken by the Republic of San Marino with Decree-Law no. 41 of 22 March 2022, aimed at countering activities that threaten international peace and security, the provisions of this Decree-Law shall be applied in order to implement the restrictive measures of the European Union established by the Decision and the Regulation.

2. For the purposes referred to in paragraph 1, considering the extent, technical nature and continuous evolution over time of the documents annexed to the aforementioned legal acts of the European Union, this Decree-Law shall expressly refer to them, thus ensuring the immediate and full alignment of the Republic of San Marino.

3. Without prejudice to paragraph 2, the provisions of this Decree-Law may be integrated by an appropriate regulation adopted by the Congress of State.

4. This Decree-Law shall apply:

a) within the territory of the Republic of San Marino, including its airspace;

b) on board any aircraft or any vessel under the San Marino jurisdiction;

c) to any San Marino citizen who is inside or outside the territory of the Republic of San Marino;

d) to any legal person, entity or body, inside or outside the territory of the Republic of San Marino, which is incorporated or constituted under San Marino law;

e) to any legal person, entity or body in respect of any business done, in whole or in part, within the Republic of San Marino.

5. The application of this Decree-Law shall be without prejudice to the applicability of the Cooperation and Customs Union Agreement between the European Economic Community and the Republic of San Marino.

Art. 3
(Competent Authorities)

1. The CRM shall have the power to cooperate, nationally and internationally, also through other San Marino Authorities or Police Forces, in order to comply with the provisions of this Decree-Law.
2. The CRM may invite any competent authority or administration to participate in the meetings and may avail itself of the meetings for the purpose of implementing the provisions of this Decree-Law.

3. Requests for derogations from the application of restrictive measures may be addressed to the Finance Department for the cases provided for in this Decree-Law. To this end, the Finance Department may also request assistance from other authorities and more in general from the Administration.
4. Requests may be addressed to the Civil Aviation, Maritime Navigation and Homologation Authority for derogations, for anything falling within its competence, from the application of restrictive measures in the cases provided for by this Decree-Law.
5. Requests for derogations and their authorisation or non-authorisation shall be reported to the CRM.

TITLE II
COMMERCIAL SANCTIONS

Art. 4
(Commercial restrictive measures for dual-use goods)

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods, whether or not originating in the Republic of San Marino to any natural or legal person, entity or body in Russia or for use in Russia.
2. It shall be prohibited to provide technical assistance, brokering services or other services related to dual-use goods and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any person, entity or body in Russia or for use in Russia.
3. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, the dual-use goods listed in Annex VII to the Regulation, which could contribute to the military and technological strengthening or development of Russia's defence and security sector, whether or not originating in the Republic of San Marino, to any natural or legal person, entity or body in Russia or for use in Russia.
4. With reference to paragraph 3, it shall also be prohibited to provide technical assistance, brokering services or other services related to dual-use goods and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any person, entity or body in Russia, or for use in Russia.
5. The prohibitions in paragraphs 1, 2, 3 and 4 of this Article shall not apply to the sale, supply, transfer or export of dual-use goods or the related provision of technical assistance, for non military use and for a non military end user for the following reasons:

a) humanitarian purposes, health emergencies, urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment or as a response to natural disasters;
b) medical or pharmaceutical purposes;
c) temporary export of items used by news media;
d) software updates;
e) use as consumer communication devices;
f) ensuring cyber-security and information security for natural and legal persons, entities and bodies in Russia except for its government and undertakings directly or indirectly controlled by that government; or
g) personal use of natural persons travelling to Russia or members of their immediate families travelling with them, and limited to personal effects, household effects, vehicles or tools of trade owned by those individuals and not intended for sale.

With the exception of points (f) and (g) of this paragraph, the exporter shall declare in the customs declaration that the items are being exported under the relevant exception set out in this paragraph and any applicable rules of the European Union, including those set out in the Decision and in the Regulation.

6. By way of derogation from paragraphs 1,2, 3 and 4 of this Article, the FD may authorise the sale, supply, transfer or export of dual-use goods or the provision of related technical assistance, for non-military use and for a non-military end user, after having determined that such goods or technology or the related technical assistance are:

a) intended for cooperation between the European Union, the governments of Member States and the government of Russia in purely civilian matters;
b) intended for intergovernmental cooperation in space programmes;
c) intended for the operation, maintenance, fuel retreatment and safety of civil nuclear capabilities, as well as civil nuclear cooperation, in particular in the field of research and development;
d) intended for maritime safety;
e) intended for civilian telecommunications networks, including the provision of internet services;
f) intended for the exclusive use of entities owned, or solely or jointly controlled by a legal person, entity or body which is incorporated or constituted under the law of San Marino or of an Associating State;
g) intended for the diplomatic representations of Associating States, including delegations, embassies and missions.

7. By way of derogation from paragraphs 1,2, 3 and 4 of this Article, the Finance Department may authorise the sale, supply, transfer or export of dual-use goods or the provision of related technical assistance, for non-military use and for a non-military end user, after having determined that such goods or technology or the related technical assistance are due under contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such contracts, provided that the authorisation is requested before 1 May 2022. In this regard, the FD may request appropriate documents in order to proceed with the assessment referred to in this paragraph.

8. In compliance with this Article, the Finance Department shall not grant an authorisation if it has reasonable grounds to believe that:

i) the end-user might be a military user, a natural or legal person, entity or body in Annex IV of the Regulation or that the goods might have a military end-use; or
ii) the sale, supply, transfer or export of dual-use goods or the provision of related technical assistance is intended for aviation or the space industry;
iii) the sale, supply, transfer or export of dual-use goods or the provision of related technical assistance is intended for the energy industry, unless such sale, supply, transfer or export or the related technical assistance are permitted under the exceptions provided for in Article 5.

9. It shall also be prohibited to sell, supply, transfer or export, directly or indirectly, weapons or other military devices, whether or not originating in the Republic of San Marino to any natural or legal person, entity or body in Belarus or Ukraine or for use in Belarus or Ukraine.
10. The FD may annul, suspend, modify or revoke an authorisation which it has granted if it deems that such annulment, suspension, modification or revocation is necessary for the effective implementation of this Decree-Law.

Art. 5
(Further derogations from marketing)

1. With regard to the legal entities listed in Annex IV to the Regulation, by way of derogation from the provisions of Article 4 paragraph 1, 2, 3 and 4, the Finance Department may authorise the sale, supply, transfer or export of dual-use goods and of goods and technology listed in Annex VII to the Regulation, or the provision of related technical assistance, only after having determined that:
a) such goods or technology or the related technical assistance are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment; or
b) such goods or technology or the related technical assistance are due under contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such contracts, provided that the authorisation is requested before 1 May 2022.
2. The FD may annul, suspend, modify or revoke an authorisation which it has granted under paragraph 1 if it deems that such annulment, suspension, modification or revocation is necessary for the effective implementation of this Decree-Law.

Art. 6
(Specific prohibitions of Annex II to the Regulation)

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, the goods or technology listed in Annex II to the Regulation, whether or not originating in the Republic of San Marino, to any natural or legal person, entity or body in Russia including its Exclusive Economic Zone and Continental Shelf, or for use in Russia, including its Exclusive Economic Zone and Continental Shelf.
2. It shall be prohibited to provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.
3. The prohibitions in paragraphs 1 and 2 shall not apply to the sale, supply, transfer or export of goods or technology, or the technical assistance, necessary for:
a) the transport of fossil fuels, in particular coal, oil and natural gas, from or through Russia into San Marino; or
b) the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.
4. The prohibitions in paragraphs 1 and 2 shall not apply to the execution until 17 September 2022 of an obligation arising from a contract concluded before 16 March 2022, or ancillary contracts necessary for the execution of such contract, provided that the FD has been informed at least five working days in advance.

5. The prohibitions in paragraph 2 shall not apply to the provision of insurance or reinsurance to any legal person, entity or body that is incorporated or constituted under the law of San Marino with regard to its activities outside the energy sector in Russia.
6. By way of derogation from paragraphs 1 and 2, the Finance Department, may authorise, under such conditions as it deems appropriate the sale, supply, transfer or export and the provision of technical assistance, after having determined that:
a) it is necessary for ensuring critical energy supply within San Marino; or
b) it is intended for the exclusive use of entities owned, or solely or jointly controlled by a legal person, entity or body which is incorporated or constituted under the law of San Marino.

Art. 7
(Prohibitions on corporate participation)

1. It shall be prohibited to:
a) acquire any new or extend any existing participation in any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia;
b) create any new joint venture with any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia;
2. By way of derogation from paragraph 1, the FD may authorise, under such conditions as it deems appropriate, any activity referred to in paragraph 1 after having determined that:
a) it is necessary for ensuring critical energy supply within San Marino, as well as the transport of fossil fuels, in particular coal, oil and natural gas, from or through Russia into San Marino; or
b) it exclusively concerns a legal person, entity or body operating in the energy sector in Russia owned by a legal person, entity or body which is incorporated or constituted under the law of San Marino.

Art. 8
(Specific prohibitions of Annex X to the Regulation)

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology for use in oil refining listed in Annex X to the Regulation, whether or not originating in the Republic of San Marino to any natural or legal person, entity or body in Russia or for use in Russia.
2. It shall be prohibited to provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.
3. The prohibitions in paragraphs 1 and 2shall not apply to the execution, until 27 May 2022, of contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such contracts.
4. By way of derogation from paragraph 1 and 2, the Finance Department may authorise, under such conditions as it deems appropriate, the sale, supply, transfer or export of goods and technology listed in Annex X to the Regulation, or the provision of related technical assistance, after having determined that such goods or technology or the related technical assistance are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.

In duly justified cases of emergency, the sale, supply, transfer or export may proceed without prior authorisation, provided that the exporter notifies the Finance Department within five working days after the sale, supply, transfer or export has taken place, providing detail about the relevant justification for the sale, supply, transfer or export without prior authorisation.

Art. 9
(Specific prohibitions of Annex XI to the Regulation)

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology for use in aviation or the space industry, as listed in Annex XI to the Regulation, whether or not originating in the Republic of San Marino to any natural or legal person, entity or body in Russia or for use in Russia.
2. It shall be prohibited to provide any one or any combination of the following activities: overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection, in relation to the goods and technology listed in Annex XI to the Regulation, directly or indirectly, to any natural or legal person, entity or body in Russia or for use in Russia.
3. It shall be prohibited to provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.

Art. 10
(Further measures)

1. It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Republic of San Marino.
2. Paragraph 1 shall not apply in the case of an emergency landing or an emergency overflight.
3. By way of derogation from paragraph 1, the Civil Aviation, Maritime Navigation and Homologation Authority may authorise an aircraft to land in, take off from, or overfly, the territory of San Marino if it has determined that such landing, take-off or overflight is required for humanitarian purposes or for any other purpose consistent with the objectives of this Decree-Law.
4. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology for maritime navigation listed in Annex XVI to the Regulation, whether or not originating in the Republic of San Marino to any natural or legal person, entity or body in Russia or for use in Russia, or to be placed on board a ship flying the Russian flag.
5. It shall also be prohibited to provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 4 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia.
6. The prohibitions in paragraph 4 and 5 shall not apply to the sale, supply, transfer or export of goods and technology referred to in paragraph 4 or the related provision of technical assistance, for non-military use and for a non-military end user, for humanitarian purposes, health emergencies, urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment or as a response to natural disasters.

7. By way of derogation from paragraphs 4 and 5, the Civil Aviation, Maritime Navigation and Homologation Authority may authorise the sale, supply, transfer or export of goods and technology referred to in paragraph 4 or the related provision of technical assistance, for non-military use and for a non-military end user, after having determined that such goods or technology or the related technical assistance are intended for maritime safety. In this regard, the Civil Aviation, Maritime Navigation and Homologation Authority may request appropriate documents in order to proceed with the assessment referred to in this paragraph.

8. It shall be prohibited to:

a) import, directly or indirectly, iron and steel products, as listed in Annex XVII to the Regulation, into the Republic of San Marino if they originate in Russia or have been exported from Russia;

b) purchase, directly or indirectly, iron and steel products as listed in Annex XVII to the Regulation which are located or which originated in Russia;

c) transport iron and steel products as listed in Annex XVII to the Regulation if they originated in Russia or are being exported from Russia to any other country;

9. The prohibitions in paragraph 8 shall not apply to the execution, until 17 June 2022, of contracts concluded before 16 march 2022, or ancillary contracts necessary for the execution of such contracts.

10. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, luxury goods as listed in Annex XVIII to the Regulation, to any natural or legal person, entity or body in Russia or for use in Russia.

11. The prohibition referred to in paragraph 10 shall apply to luxury goods listed in Annex XVIII to the Regulation insofar as their value exceeds EUR 300 per item unless otherwise specified in the Annex.

12. The prohibition referred to in paragraph 10 shall not apply to goods which are necessary for the official purposes of diplomatic or consular missions of Member States or partner countries in Russia or of international organisations enjoying immunities in accordance with international law, or to the personal effects of their staff.

13. The prohibition in paragraph 10 may be derogated, upon request to the FD, provided that:

a) the non-export(s) may jeopardise the stability of the company;

b) the amount of the total intended export(s) does not exceed in any case, within the same reference period (12 months), the amount of the export(s) during the preceding financial year;

c) the request for derogation is made by an economic operator which has been established for at least 5 years.

14. It shall be prohibited for operators to broadcast, or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies listed in Annex XV to the Regulation, including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed.

15. Any broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies listed in Annex XV to the Regulation shall be suspended.

Art. 11

(Prohibitions on military equipment)

1. It shall be prohibited to provide, directly or indirectly, technical assistance:

a) related to the goods and technology listed in the Common Military List referred to in the Official Journal of the European Union C 107 of 9 April 2014 and subsequent amendments or related to the provision, manufacture, maintenance and use of the goods included in such list to any natural or legal person, entity or body in Russia or for use in Russia;
b) or brokering services related to dual-use goods and technology, or related to the provision, manufacture, maintenance and use of such goods or technology, to any natural or legal person, entity or body in Russia or for use in Russia, if the items are or may be intended, in their entirety or in part, for military use or for a military end-user.

2. The prohibitions in paragraph 1 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts and to the provision of assistance necessary to the maintenance and safety of existing capabilities within the Republic of San Marino.

3. The prohibitions in points (a) and (b) of paragraph 1 shall not apply to the provision, directly or indirectly, of technical assistance related to the following operations:
a) the sale, supply, transfer or export and to the import, purchase or transport of Hydrazine (CAS 302-01-2) in concentrations of 70 per cent or more, provided that such technical assistance refers to an amount of Hydrazine calculated in accordance with the launch or launches or the satellites for which it is made, and which does not exceed a total quantity of 800 kg for each individual launch or satellite;
b) the import, purchase or transport of Unsymmetrical dimethyl hydrazine (CAS 57-14-7);
c) the sale, supply, transfer or export and to the import, purchase or transport of monomethyl hydrazine (CAS60-34-4), provided that such technical assistance refers to an amount of Monomethyl Hydrazine calculated in accordance with the launch or launches or the satellites for which it is made,

Insofar as the substances mentioned in points (a), (b) and (c) of this paragraph are destined for the use of launchers operated by European launch service providers, for the use of launches of European space programmes, or for the fuelling of satellites by European satellites manufacturers.

4. The prohibitions in points (a) and (b) of paragraph 1 shall not apply to the provision, directly or indirectly, of technical assistance related to the sale, supply, transfer or export and to the import, purchase or transport of Hydrazine (CAS 302-01-2) in concentrations of 70 per cent or more, provided that such technical assistance refers to Hydrazine intended for the following purposes:
a) the tests and flight of the ExoMars descent module in the framework of the ExoMars 2020 mission, in an amount calculated in accordance with the needs of each phase of that mission, which does not exceed a total of 5 000 kg for the entire duration of the mission; or
b) the flight of the ExoMars carrier module in the framework of the ExoMars 2020 mission, in an amount calculated in accordance with the needs of the flight, which does not exceed a total of 300 kg.

5. The provision of technical assistance related to the operations referred to in paragraph 3 and 4, directly or indirectly, is subject to the prior authorisation by the FD. Applicants for authorisation shall provide all necessary relevant information.

6. The FD shall provide its authorisation for the provision of technical assistance or brokering services, related to the items referred to in Annex II to the Regulation as well as the provision, manufacture, maintenance and use of those items, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf, or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State. In duly justified cases of emergency, the provision of the services referred to in this paragraph, may proceed without prior authorisation, provided that the supplier notifies the Finance Department within five working days after the provision of the services.

Art. 12
(Exclusion of liability)

1. Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on the part of the FD, if they did not know, had no reasonable ground to suspect, or did not suspect that their actions would infringe the measures set out in this Decree-Law.

Art. 13
(Effects of restrictive measures on contracts and transactions)

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decree-Law, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, in particular a claim for extension or payment of a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by legal persons, entities or bodies listed in Annexes III, IV, V, VI, XII, XIII, XIV and XV or any other Russian natural or legal person, entity or body or any natural or legal person, entity or body acting through or on behalf of one of the parties referred to in this point.
2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.
3. This Article shall be without prejudice to the right of the parties referred to in paragraph 1 to judicial assessment of the legality of the non-performance of contractual obligations in accordance with this Decree-Law.

Art. 14
(Prohibition of circumvention)

1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions in this Decree-Law, including by acting as a substitute for the parties subject to the sanctioning measures introduced herein or otherwise acting to their advantage by using the exceptions or derogations provided for herein.

TITLE III
COORDINATION PROVISIONS

Art. 15
(Administrative violations)

1. Consistently with the provisions of Decree-Law no. 41 of 22 March 2022, the violation of the obligations referred to in this Decree-Law in commercial matters (import - export) shall be punished with a pecuniary administrative sanction from euro 5,000.00 to 1,000,000.00 in accordance with the procedure explained below. With regard to violations that concern matters falling within the competence of the Civil Aviation, Maritime Navigation and Homologation Authority, Law no. 125 of 29 July 2014 and subsequent amendments, as well as related regulations, shall apply.
2. The Tax Office shall apply the sanctions provided for in this Decree-Law in accordance with the principle of proportionality and considering any relevant circumstance. In particular, in determining the level of each sanction between the minimum and maximum amount, or in applying the administrative measures referred to in the first paragraph, the Tax Office shall take account of the following:

a) the seriousness and the duration of the violation;
b) the degree of liability of the natural or legal person held liable;
c) the economic profile of the natural or legal person held liable;
d) the profits gained from the violation by the natural or legal person held liable, insofar as they can be established;
e) the losses to third parties caused by the violation, insofar as they can be established;
f) the level of cooperation of the natural or legal person held liable with the competent authority;
g) previous violations by the natural or legal person held liable.

3. If they have not participated in the commission of the violation, the following persons shall not be subject to any sanctions:

a) the director or the auditor who has detected the violation deriving from a collective decision, provided that the findings are included in the corporate books or records and a formal and timely report is made to the Tax Office;
b) the other punishable persons who, having detected the violation in the exercise of their functions, have submitted a formal and timely report to the Tax Office.

4. The sanctioning procedure:

a) shall be initiated by the Tax Office within 9 months following the detection of the violations, by transmitting a notice of the alleged violations to the persons concerned;
b) shall be terminated - account taken of any counterargument submitted by the persons concerned within 30 days, which might be extended by the Tax Office - no later than 90 days following the date on which the procedure is initiated, i.e. following the notification above, with the filing of the case or the application of the administrative sanction through a reasoned decree containing the payment order. In case of extension of the time-limit for the submission of counterarguments, the 90-day deadline shall be extended by the number of days of extension granted.

5. The person sanctioned shall pay the administrative sanction within 60 days following the notification of the sanctioning measure.

6. An appeal against the sanctioning measure may be lodged through judicial procedure before the Administrative Judge in the manner and according to the terms referred to in Title II of Law no. 68 of 28 June 1989.

7. The lodging of an appeal through judicial procedure under paragraph 6 shall suspend the sanctioning measure, which shall therefore become effective and enforceable with the final judgement dismissing the appeal.

8. After the expiry of the payment deadline, if neither the sanctioned person nor the jointly and severally liable legal person have paid the sanction, the Tax Office shall apply the compulsory collection procedure under Law no. 70 of 25 May 2004 and subsequent amendments to collect the amounts. Pecuniary administrative sanctions shall be collected in accordance with the same procedure envisaged for the collection of taxes, duties, charges, sanctions and any other revenue due to the State, public entities and the Autonomous State Corporations.

9. The amounts collected shall be registered in the chapters managed by the Tax Office.

10. The Tax Office shall detect the administrative violations as established in paragraph 12 and shall apply the sanctions set forth in this Decree-Law according to the criteria and procedures described hereunder.

11. The approach for the application of sanctions shall be:

a) dissuasive, in order to discourage the violation of rules and the repetition of the unusual conduct;
b) proportional, so that the amount of the sanctions is consistent with the seriousness of the violations;

c) objective, in order to ensure equal treatment when judging the various violations;
d) transparent with respect to the sanctioned person, whose possible counterarguments may supplement the evidence acquired through on-site and off-site inspections.

12. In compliance with the procedure described in this Article, the Tax Office shall apply the sanctions upon notification by the Administration or the Police Force, or directly in the event that it has autonomously carried out the assessment, or it shall inform the parties concerned that it terminated the sanctioning procedure initiated against them.

13. The Tax Office's sanctioning procedure shall involve the following steps:
a) notification of violations detected;
b) submission of counterarguments and possible personal hearing;
c) assessment of overall evidence;
d) proposal by the Tax Office to impose the sanction or to file the case;
e) adoption of the sanctioning measure or filing of the case by the Tax Office;
f) notification of the sanctioning measure.

14. To calculate the time-limit referred to in paragraph 4 above, the detection of the violations shall coincide with the date on which:
a) the obliged party is notified of the findings;
b) the Tax Office receives the documents, whether hard-copy or electronic, from which the violation emerges.

15. The alleged violations shall be notified in accordance with Article 17, paragraphs 1 and 2 of Law no. 100 of 29 July 2013.

16. In addition to the formal elements that qualify the notice of the alleged violations as the document initiating the administrative sanctioning procedure, such notice shall include:
a) a reference to the violation;
b) the date on which the detection of the violation was concluded;
c) a description of the act or omission constituting the violation;
d) an indication of the provisions violated and the relevant sanctions;
e) an invitation made to the parties charged with the violations and to the legal person held jointly and severally liable to transmit to the Tax Office any counterargument within 30 calendar days following the notification;
f) an indication of the possibility for the parties charged with the violations to request a personal hearing within the same time-limit for the submission of counterarguments, either as established originally or extended in compliance with paragraph 17;
g) the time-limit for the conclusion of the administrative procedure under paragraph 4.

17. Anyone subject to a sanctioning procedure, including legal persons held jointly and severally liable, shall be entitled to submit counterarguments, in line with the principle of defence referred to in Article 15 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. This right may be exercised within 30 days of notification of the alleged violations. By submitting and signing a duly motivated application, the parties concerned may request an extension not exceeding 30 days, which may be granted, according to proportionality criteria, also in relation to the operational characteristics and size of the obliged party and the complexity of the alleged violations. Failure to submit documents for defence purposes shall not prejudice the subsequent stages of the sanctioning procedure. Counterarguments may be submitted individually or be signed by all parties concerned, including the legal representative of the relevant legal person, or by some of them. The parties concerned may also specify in the counterarguments the address to which subsequent communications concerning the sanctioning procedure shall be sent. In order to ensure cost-effectiveness of the administrative action, counterarguments shall be concise, reflect the order of the alleged violations and be accompanied only by documents:

a) that are relevant to the alleged facts and to the defence arguments submitted;
b) that are not already known by the Tax Office;
c) that are in order and mentioned in a list.

18. Also the filing of the case shall be notified to the parties concerned.

19. The sanctioning measure shall indicate:

a) the notice of the alleged violations;
b) the reasons for the measure, also by expressly indicating the assessments concerning possible counterarguments submitted by the parties subject to the measure;
c) the amount of the sanction to be paid and the relevant payment modalities;
d) the criteria adopted for the determination of the applicable sanction;
e) the time-limit for appeal and the competent Authority before which the appeal may be lodged.

20. The sanctioning measure shall be notified in compliance with paragraph 15 above regarding alleged violations.

21. The compulsory collection procedure shall be carried out no earlier than six months following the notification of the sanction. In case of administrative appeals, the six-month time-limit shall run from the date of conclusion of the judicial proceedings.

22. The procedural legitimacy for administrative appeals against the measures issued by the Tax Office falls within the responsibility of its Director and, in case of absence or impediment of the latter, of another specifically delegated person.

23. For all matters not expressly provided for in this Decree-Law, the provisions pertaining to the relevant matters, shall apply, including any additional administrative and criminal sanctions.

Done at Our Residence, on 7 April 2022/1721 since the Foundation of the Republic.

THE CAPTAINS REGENT
Oscar Mina – Paolo Rondelli

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini