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COMMISSION STAFF WORKING PAPER

Obstacles to access by Andorra, Monaco and San Marino to the EU's Internal Market and Cooperation in other Areas

Accompanying the document

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino

Options for Closer Integration with the EU

{COM(2012) 680 final}

OBSTACLES TO ACCESS BY THE SMALL-SIZED COUNTRIES TO THE INTERNAL MARKET AND COOPERATION IN OTHER AREAS

CONTENTS

Purpose and Content of this Staff Working Paper

This Staff Working Paper is a factual description of the relations between the EU and the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, and is based partly on information provided by these countries regarding the obstacles they face in accessing the Internal Market. It is an indicative guide to these relations, not an exhaustive analysis.

CHAPTER 1: FREE MOVEMENT OF PERSONS AND VISA-FREE TRAVEL

This chapter covers the free movement of persons, both for the purposes of short-term (up to three months) entry, transit and stay (section 1.1.); and for employment and long-term residence (section 1.2.). Finally, it summarises how the EU deals with the free movement of persons in its relations with third countries (section 1.3.).

1.1. Visa-Free Travel and Schengen

Situation of the small-sized countries

Citizens of the three small-sized countries (Andorra, San Marino and Monaco) are third-country nationals. Nevertheless, they can enter and travel through the EU without a visa. Indeed, by virtue of Council Regulation 539/2001,[1] nationals of the small-sized countries may enter, transit through, and travel freely within the Schengen zone for a period of up to three months within any six month period without a visa. Although not yet full members of Schengen, Bulgaria, Cyprus and Romania apply Regulation 539/2001. Nationals from the three small-sized countries can therefore travel to these countries without a visa, under the same conditions that apply in the Schengen zone. Ireland and the UK are not members of Schengen and have their own entry requirements, but do not require a visa from citizens of the three small-sized countries for stays of no more than 6 months as general visitor.

Andorra

As Andorra is not part of the Schengen area, border controls are carried out at its borders with the neighbouring Schengen states, France and Spain. However, Andorra coordinates its visa requirements with the Schengen area and accepts Schengen visas. For stays of EU citizens in Andorra of up to 90 days there is freedom of circulation without a visa or permit. For stays longer than 90 days a residence permit is required.

Monaco

[1] Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

Monaco is not a Contracting Party to the Schengen Convention. However, by virtue of two bilateral agreements with France[2], its territory is within the external borders of the Schengen area; consequently, EU and Monaco nationals can travel freely without a visa throughout the whole of the Schengen area, including Monaco. The agreements provide for the necessary security safeguards and the establishment of controls at Monaco's external borders, which are carried out by the French authorities at the authorised external border crossing points *Monaco-Heliport* and *Monaco-Port*. In addition, Monégasque residence permits are equivalent to Schengen visas.

Unlike San Marino and Andorra nationals, Monégasque nationals are not permitted to use "EU" corridors at Schengen entry points. Monaco would appreciate if its nationals could benefit from the same treatment.

San Marino

Although San Marino is not a part of the Schengen area, no external border checks are carried out at the crossing points between Italy and San Marino. San Marino does not participate in other elements of the Schengen *acquis*, such as police and judicial cooperation[3].

Use of EU corridors

A pragmatic approach has been agreed between the EU on the one hand, and Andorra and San Marino on the other, on the facilitation of the entry of their nationals into the Schengen area. The Council's Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) agreed in 2004 that citizens of Andorra and San Marino may use "EU" corridors at Schengen entry points[4]. These measures are currently applied by the Schengen Member States on a pragmatic, voluntary basis[5] and are not based on any formal agreement with Andorra and San Marino.

Problems faced by the small-sized countries

1. Nationals of the small-sized countries need a residence permit for stays in the EU Member States of over 3 months (please see under "free movement of persons", below);
2. Contrary to the established practice mentioned above (which does not apply to Monégasque nationals), nationals of Andorra and San Marino are not always permitted to use the EU/EEA corridor at Schengen entry points.

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2 Two agreements in the form of exchanges of letters between Monaco and France, signed the 15 December 1997, adapted the section of the Convention on Good Neighbourly Relations of 18 May 1963 on the entry, stay and establishment of foreigners in Monaco to the provisions of the Convention on the Implementation of the Schengen Agreement.

3 Report of the Presidency on EU Relations with the Principality of Andorra, the Republic of San Marino and the Principality of Monaco, 14 June 2011, doc. 11466/11.

4 Presidency Note to the Council's Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), no. 13020/04, Brussels, 1 October 2004.

5 The Presidency note states that they are applied "without prejudice to the application of the regime of external border controls of third country nationals to the citizens of these countries".

3. Nationals of the small-sized countries are sometimes asked to show a visa at the airport (by the airline desk or immigration officials) when they want to board a plane to return, via EU territory, to their home country from outside Europe. This can cause inconvenience and delays.

1.2. Free Movement of Persons, their Family Members, and Students

Situation of the small-sized countries

Given that citizens of the three small-sized countries are not EU citizens and cannot benefit from all the rights that EU law provides for EU citizens, nationals of the small-sized countries require a permit to work, study or reside in the EU Member States. Currently, the conditions for obtaining a permit vary, depending on the Member State and type of employment. Immigration is a competence shared between the EU and the Member States. Admission of third-country nationals is decided at national level, whereas some rights and conditions are harmonised at EU level. Andorra and San Marino have cooperation agreements with the EU but their scope as regards rights on movement of workers is limited to non-discrimination as regards conditions of employment[6]. The Cooperation and Customs Union Agreement with San Marino also provides for a legal basis for implementing provisions to set up a limited set of social security coordination rules between the EU Member States and San Marino[7].

Bilateral agreements

Andorra

Andorra has concluded bilateral agreements with France, Spain and Portugal on the free movement of persons. These agreements cover the right of residence and professional establishment of their citizens including student mobility and mutual recognition of professional qualifications, as well as social security coordination. Andorran workers and students need a work and residence permit (or simply a residence permit in the case of students).

Monaco

Monaco has concluded a bilateral agreement with France on the free movement of persons which provides that Monégasque nationals do not require a permit to work, study or reside in France. Monaco also has bilateral agreements with France on social security coordination and the mutual recognition of professional qualifications. What is more, Monaco signed, on 12 February 1982, a general social security Convention with Italy.

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6 Article 5 of the Cooperation Agreement with Andorra, and Article 20 of the Cooperation and Customs Union Agreement with San Marino.

7 On 30 March 2012 the Commission adopted a Proposal for a Council Decision on the position to be taken by the European Union within the Cooperation Committee established by the Agreement on Cooperation and Customs Union between the European Economic Community and their Member States, of the one part, and the Republic of San Marino, of the other part, with regard to the adoption of provisions on the coordination of social security systems (COM(2012) 157 final). During the EPSCO Council of 4 October 2012, the Council reached a political agreement on this proposal. Once it is adopted, the discussions will start with San Marino in view of the adoption of the Decision of the Cooperation Committee and only then these provisions will enter into force.

San Marino

San Marino has concluded a bilateral agreement with Italy on the free movement of persons [8]. This allows San Marino nationals to work and reside in Italy.

Problems faced by the small-sized countries

Nationals of the small-sized countries face the usual immigration procedures if they want to work, reside, bring their families to or study in the EU. In particular, their nationals have none of the following rights enjoyed by EU citizens[9]:

- Freedom of movement for employment purposes throughout the EU; the experience of San Marino nationals[10] shows that the complexity of procedures to obtain a residence permit is an obstacle to obtaining employment in EU Member States. It is difficult to obtain from businesses a prior declaration of employment, which is necessary in order to apply for a stay permit. For stays over three months, a visa or residence permit is required. This is granted on the basis of specific criteria, such as the availability of sufficient economic means and accommodation;
- The right to stay in the EU after the end of economic activity; for example, if a San Marino national is already in the EU when his stay permit for the purposes of employment expires, he has to return to San Marino to regularise his position;
- The right of residence and pursuit of an economic activity for members of the family;
- Free movement of persons for the purposes of education and research;
- Access to EU research funding;
- Social security coordination[11] and the mutual recognition of professional qualifications[12].

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8 Bilateral Agreement on Amity and Good Neighbourhood of 31 March 1939 (law of 6 June 1939, no.1320 (1)).

9 Unless specified otherwise, provided by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L158, 30.4.2004, p. 77)..

10 Source: 'List of Problems encountered by San Marino and deriving from its status as a non-EU Member State', 2011, p.7.

11 Within the EU, the relevant legislation is Regulation 883/2004 on the Coordination of Social Security Systems. The social security systems of the three countries are not coordinated with the security systems of the Member States; however, as the case may be, nationals of the three states can benefit from coordination between the legislation of Member States (Regulation (EU) No 1231/2010 of the European Parliament an of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L344, 29.12.2010, p. 1).

12 Within the EU, Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L255, 30.9.2005, p. 22) confers on persons having acquired their professional qualifications in a Member State the right, under the conditions laid down in the Directive, to have access to the same profession and pursue it in another Member State with the same rights as nationals.

Conditions for EU nationals to work and reside in the small-sized countries

Andorra

Frontier workers, temporary workers, active residents and non-active residents who are nationals of one of the neighbouring countries of Andorra, a Member State of the EU, or one of the EEA EFTA countries, are given priority as regards immigration authorisations. Nationals of other countries are subject to the immigration requirements established by the international treaties in force in Andorra.

Authorisations are granted subject to the quotas approved by the government. In the event of acceptance, the requester receives an authorisation for one year, renewable three times for a period of two years, which includes the right to have medical insurance cover, family reunification from the end of the first year and access to an employment agency in case of unemployment. From the end of the seventh year, the renewal is granted for a period of ten years.

Anyone applying in order to obtain an immigration authorisation for studies or to carry out research of scientific or similar nature can reside in the country only during the duration of the studies or research for which they have received this authorisation. A new law on Foreign Investment entered into force July 19, 2012 and opens the liberal professions to nationals of third countries provided that Andorrans have reciprocal rights in those countries. Moreover, a new law modifying the Law on Immigration (9/2012) was adopted in May 2012 and establishes two requirements, both of which must be fulfilled by passive residents:

- to invest an amount of 400.000 euros in the country
- to reside in Andorra for at least 90 days per annum

It also introduces two new categories of residence permit:

1. A residence permit for professionals with an international projection that can be granted to foreign individuals with a main permanent residence in Andorra of at least 90 days per annum and who carry out a professional activity
2. A residence permit by reason of scientific, cultural and sportive interest that can be granted to foreign individuals who have a good international reputation in the fields of science, culture and sports, and who have their main residence in Andorra at least 90 days per annum. The requester must deposit a sum of 30,000 euros with the INAF (Andorra's entity for banking supervision) as well as 7,000 euros for each dependant (eg spouse, child). This money stays blocked without the payment of interest until the person's departure.

Monaco

To enter and/or reside in Monaco

The agreement between Monaco and France of 15 December 1997[13] provides *inter alia* that:

- Any person of foreign nationality who wishes to enter the territory of Monaco and to stay there for a period not exceeding three months must possess a document that would be required to enter France (passport, travel or identity document);
- French nationals must simply be holders of a French national identity card.

European Economic Area (EEA) nationals, including EU Member State citizens, do not require a visa to reside in Monaco. However, to obtain a residence permit (*carte de séjour*), they must apply to the Residents Section of the Directorate of Public Security and submit the necessary documents.

To work in Monaco as an employee

As Monégasque nationals are a minority in their own country, Monaco considers that the job priority system is the only way for Monégasque nationals to live and work in Monaco[14]. Foreign nationals (including EU citizens) wanting to work as employed persons in Monaco require a work permit and every change of job requires a new permit. An employer who wishes to hire or re-hire a foreign national must obtain written authorisation before the person starts work. This authorisation can be refused if priority jobseekers, as defined by the law of Monaco, hold the same qualifications. Foreign nationals require a job offer, in the form of an employment commitment from the Employment Service, in order to obtain a residence permit.

Unemployment

Persons made redundant and residing in Monaco must register with the Employment Service in order to receive unemployment benefits. Foreign nationals must present themselves with a redundancy letter and a valid residence card.

San Marino

San Marino immigration law makes no distinction between EU citizens and foreign nationals. EU citizens and other foreign nationals may freely enter, circulate and stay in San Marino for up to 20 days without a visa. For stays of between 21 and 90 days, a tourist permit is required. Beyond 90 days, a residence or cohabitation permit (*permis de séjour*) is required. Holders of such a permit have the same rights as San Marino citizens, except voting rights. They can therefore look for and accept offers of employment, subject to registration in the job seekers list. However, the laws of San Marino do not automatically grant the right of family reunification to migrant workers and their families.

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[13] Exchange of letters dated 15 December 1997 between the Monaco and French authorities modifying certain provisions of the France-Monaco Convention on Neighbourly Relations of 18 May 1963.

[14] Monégasque nationals account for only 21.6% of residents and over 80% of workers employed in Monaco reside outside Monaco.

Residence and cohabitation permits are not subject to a quota system but a special authorisation to reside in San Marino is issued by the competent San Marino authorities upon request. A quota system applies only to certain kinds of temporary and seasonal jobs. These kinds of stay temporary and seasonal permits (*permis de séjour temporaire*) are granted subject to quotas set annually by the government based on real needs, after having heard the opinion of the economic and social categories involved.

As regards safety, social security and healthcare, the laws of San Marino provide for the recognition of all the benefits provided for in the main EU legislative acts. San Marino has also entered into specific Agreements with a number of countries (Belgium, France, Italy and Switzerland).

The EU-San Marino Cooperation and Customs Union Agreement establishes a regime free of any discrimination between San Marino citizens and EU citizens as regards work conditions, salaries and social security. It also provides for the right to the aggregation of the periods of contribution accrued in different contracting Parties. Foreign workers, including EU citizens, in possession of a regular residence permit (frontier workers excluded) and who are employed enjoy the same benefits guaranteed to San Marino employees. As regards the protection of the rights of employees and self-employed persons to supplementary pension schemes, San Marino has adopted a legislative measure (Law no.191 of 6 December 2011), which establishes a Supplementary Pension Fund (called FONDISS). All workers, whether employees or self-employed persons, whether San Marino nationals or foreigners, who are entered in the first-pillar pension fund automatically join the Supplementary Pension Fund if they have not reached the age of 50 when the above-mentioned law enters into force. However, this is without prejudice to the right of the workers who are already 50 years of age to join the fund on a voluntary basis.

Every San Marino or foreign citizen who is registered with the national health and social security service and resides in San Marino receives a health system card, giving access to medical and health facilities.

1.3. Free Movement of Persons in the EU's Relations with Third Countries

As a means of comparison, this section outlines how the free movement of persons is dealt with in the EU's relations with other (non-EU) west European countries.

1) Schengen

Norway and Iceland are Parties to the Schengen Agreement since 1996, and are part of the Schengen area. When the Schengen *acquis* was integrated into the EU, the special relationship with these countries was maintained[15].

[15] Article 6 of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union.

Switzerland and Liechtenstein are associated to the implementation, application and development of the Schengen *acquis* and form part of the Schengen area[16].

2) Free Movement of Persons

European Economic Area (EEA)
The Agreement on the European Economic Area (EEA), provides for the free movement of persons under identical conditions as within the EU. This includes the right to entry, residence (Directive 2004/38/EC has been incorporated into the EEA Agreement) and access to work as employed persons[17]. The EEA Agreement also provides for social security coordination and the mutual recognition of qualifications. The EEA Agreement provides for the same transitional arrangements as regards the free movement of workers as apply within the EU for workers from Member States that have acceded recently to the EU and to whom the scope of the EEA Agreement has been extended.

Free Movement of Persons Agreement with Switzerland
The Free Movement of Persons Agreement (FMPA) with Switzerland provides for the free movement of persons under broadly rather similar conditions as within the EU. This includes the right to entry, residence, access to work as employed persons and the right to stay in the territory of the Contracting Parties, as well as provide cross-frontier services[18]. However, Directive 2004/38[19] has not yet been incorporated into the Agreement, so that the current legal situation closely mirrors the state of EU law on the free movement of EU citizens as it existed before that Directive was adopted. The Agreement also provides for social security coordination and the mutual recognition of qualifications. Article 10 FMPA contains transitional provisions, including a safeguard clause, that allow Switzerland to apply quantitative limitations for employed and self-employed workers, control on priority of workers integrated into the labour market and wage and working conditions applicable to EU nationals during a transitional period after the entry into force of the agreement and after extension of the agreement to new EU Member States.

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16 Agreement with Switzerland of 26 October 2004 (OJ L53, 27.2.2008, p. 52) and Protocol on the accession of Liechtenstein to this agreement of (OJ L83, 26.3.2008, p. 3).

17 Liechtenstein may apply quantitative restrictions on new residence permits for economically active and economically non-active persons. This arrangement will be reviewed every five years.

18 Under the conditions stipulated in Article 17 of the Agreement.

19 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L158, 30.4.2004, p. 77).

CHAPTER 2: FREE MOVEMENT OF SERVICES AND FREEDOM OF ESTABLISHMENT

The small-sized countries face significant obstacles in the area of the free movement of services and freedom of establishment. These freedoms are not provided for in any of the agreements concluded by the EU with the small-sized countries. While there are no restrictions on companies from the small-sized countries establishing a business activity or investing in an EU Member State when they operate in the EU from a subsidiary established as a company in a Member State, such establishment may be subject to authorisation if no separate legal person is created; indeed, there is no right of establishment for third country legal persons (as for natural persons).

Once established in one Member State, the entity in question is free to provide services in all other Member States in conformity with EU and national law, without discrimination[20]. However, in the case of companies based in the small-sized countries, establishment in the EU may increase their costs due to the need for an economic presence and associated administrative procedures. A presence in the EU may also be necessary to meet the requirements of EU legislation on consumer protection (eg after-sales customer service based in the EU). These constraints may particularly discourage small and micro-enterprises from doing business in the EU[21].

2.1. Key Obstacles

In addition, key obstacles and specificities raised by the small-sized countries are summarised below.

Andorra

Andorran citizens do not have access to the liberal professions in the EU (lawyers, architects, engineers, doctors etc) and cannot establish themselves as self-employed persons. The only exceptions are France, Spain and Portugal, with which Andorra has signed bilateral agreements allowing their nationals to establish themselves in Andorra for the purpose of exercising an activity in the liberal professions (eg lawyers, architects, engineers, doctors). Reciprocally, Andorrans benefit from the same rights in the aforementioned three countries[22].

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20 Although, as for EU nationals and companies, depending on the kind of service this may be subject to certain safeguards, such as pro forma registration with a professional body.

21 As regards natural persons, nationals of the small-sized countries need a permit to reside and work (be it as a worker or a self-employed person) in an EU Member State (see Chapter on free movement of persons). In practice, immigration law may therefore constitute a barrier to the provision of services by companies or persons established in the small-sized countries.

22 Article 7 Trilateral agreement; Law 6/2008 of 15th May on the exercise of liberal professions and professional associations (*Llei 6/2008, del 15 de maig, d'exercici de professions liberals i de col·legis i associacions professionals*).

Andorra has expressed its wish to obtain the freedom of establishment for Andorran companies within the internal market to support its economic growth. Nevertheless, Andorra has highlighted that it would like to open its own market for establishment and services only gradually and on the basis of transitional periods in order to enable a gradual process of adaptation in the various sectors.

Andorra would also like to become more integrated into the EU's internal market for transport services[23]. Andorran law is in this area is already partly based on the EU acquis. Andorra has indicated that multi-modal policies for transport are also compatible with Andorran interests. Andorra has bilateral agreements with France, Spain and Portugal that regulate the road transport of passengers and goods in the contracting Parties. Concerning road cabotage, there is a trilateral agreement with France and Spain and bilateral agreements with other countries. The Andorran government is also studying the possibility of creating a heliport.

Driving licenses
Concerning the recognition of driving licenses, currently Andorra recognizes and exchanges driving licenses of the countries with which a bilateral Agreement has been concluded. Andorra has expressed a wish to find a more general solution to this problem considering the small number of Andorran driving licenses exchanged so far.

Monaco
The territory of Monaco is integrated into the EU Customs Union. Nevertheless, companies of this country do not have access to the EU road haulage market[24]. The activities of these transport companies are limited and encounter many difficulties in neighbouring countries, whereas Monaco does not impose any restrictions on European transport companies. In the absence of an agreement on that matter with the EU, bilateral agreements would need to be negotiated separately with each of the Member States, which could be a cumbersome process.

In the field of air transport, Monaco was a member of the Joint Aviation Authorities (JAA) and has expressed a wish to join the European Safety Aviation Agency (ESAA) as a European third country, in accordance to article 66 of the ESAA rules establishing the Agency. The civil aviation is under the process of standardization in order to meet the required criteria of the ESAA and Monaco envisages the signing of an agreement with the Commission. Furthermore, Monaco Civil Aviation was accredited by EASA in June 2011 in accordance with article 66 of the rules establishing the Agency.

Monaco would like to conclude an agreement with the EU that would permit Monégasque companies to have the same freedoms as European companies have in Europe (France and Italy in particular) and Switzerland and allow Monégasque

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23 Memorandum on relations between Andorra and the EU, p.4.

24 Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (recast) (OJ L300, 14.11.2009, p.72).

companies and civil aviation to be recognised and/or accredited at European level in matters of security and safety.

Regarding financial services, Monaco became an official member of the SEPA in March 2009. As Monaco is not an EU Member State, companies established in Monaco are not allowed to provide services in the EU. For instance, financial services including UCITS under Monégasque law, cannot be marketed in the EU or be included in European products. Similarly, financial advice and portfolio management cannot be supplied by providers established in Monaco for clients in the EU.

San Marino

Financial services and related issues
San Marino has identified several problems in the area of financial services and related areas. Only some of these problems fall within EU competence, whereas others relate to *inter alia* international financial rules and the practices of private companies. Where they fall within EU competence, the problems raised by San Marino concerning financial services and related issues can only be partly solved in the framework of existing agreements.

Over the past years, San Marino has undertaken a process, which is still ongoing, of gradual adjustment of its economic and financial system to international and EU standards. Cooperation has been strengthened both with international bodies (IMF, OECD, Moneyval, the EU) and individual countries, in particular EU Member States in the areas of anti-money laundering, corporate law, tax cooperation, banking supervision and, more generally, banking and financial law. In particular, in the revised Monetary Agreement with the EU, San Marino commits itself to comply with the EU *acquis* on banking and financial matters according to a specific timetable.

Obstacles in other areas
San Marino has stated that its nationals and companies do not have the right to provide services, including notary services, in the EU because there is no agreement with the EU on the right of establishment or the cross-border provision of services. San Marino has highlighted that, in this context, its companies are not permitted to provide telecommunication services in the EU under the same conditions as EU operators, mentioning in particular the EU licence issuing regime which entails additional formalities and therefore costs for its operators. San Marino also regrets that, as a non-Member State, it is also excluded from EU policy initiatives aimed at improving telecoms services in the EU Member States.
As regards the transport of persons, San Marino is considering becoming a Party to international agreements, including the Interbus Agreement[25]. The part of the *acquis* related to railway transport is not applicable to San Marino, as no international railway

[25] Taking into account the current situation of San Marino, characterised by the existence of a number of bilateral agreements with EU Member States.

connections exist. Moreover, San Marino has expressed a possible interest in joining the European Aviation Safety Agency (EASA).

2.2. Mutual Recognition of Professional Qualifications[26]

The small-sized countries currently face obstacles because their professional qualifications are not systematically recognised by the EU Member States. Under the EU system, Directive 2005/36/EC aims to achieve the mutual recognition of professional qualifications[27] in order to realise the free movement of persons and services in the EU's internal market.

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[26] Situation in the EEA: Directive 2005/36/EC on the recognition of professional qualifications has been incorporated into the EEA Agreement, with some adaptations and exceptions. Joint EEA Committee Decision 142/2007.

[27] EU law distinguishes between professional and academic qualifications, the latter not being an EU competence.

CHAPTER 3: FREE MOVEMENT OF GOODS

Bilateral trade in goods between the EU and the three small-sized countries is facilitated by customs union agreements: Monaco has one with France and is part of the customs territory of the EU; whereas San Marino and Andorra both have a customs union agreement with the EU. However, the small-sized countries face market access obstacles in the form of technical barriers to trade: in order to be placed on the EU market, goods from these countries must meet the EU's internal market standards and rules, such as on product safety and consumer protection.

Companies based in the small-sized countries may face obstacles to selling their goods in the EU, even if the country where they are established has unilaterally taken over the relevant EU acquis - the existence of an agreement with the EU is in most cases still necessary, notably to recognise the legislation and its implementation as meeting EU standards. What is more, even where a small-sized country has an agreement with the EU, it needs to be updated to keep pace with the evolution of EU legislation.

In the case of Andorra and San Marino, standard customs procedures, including a declaration, apply. These formalities may occasionally cause delays.

3.1. Andorra

To date, the Customs Union Agreement concluded in 1990 between the Principality of Andorra and the EEC, only covers industrial goods[28] produced in Andorra or third country industrial products that are put into free circulation there. The Agreement provides for the elimination of customs duties, charges having equivalent effect and quantitative restrictions in trade between the two signatory parties, on the one hand; and for the adoption by Andorra of the EU *acquis* on imports *vis-à-vis* third countries in the customs union and the implementation of measures under the trade policy applied by the EU to imports, on the other hand.

The Agreement also establishes a specific regime for agricultural products (Chapters1-24 HS) not covered by the Customs Union. Andorran agricultural products that meet the conditions set out in "Appendix origin" part of the agreement are exempt from import duties when entering the EU. In return, Andorra provides a tariff preference of 60% of the autonomous rate applied to manufactured tobacco in the EU and will not adopt a an import scheme more favourable to goods from third countries than to goods originating in the EU.

Andorra considers the possibility of extending the scope of the customs union to cover all Harmonized System (HS) chapters so as to include agricultural products (whether or not processed) of HS Chapters 1-24 which are currently only free from import duties when they originate in Andorra.

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[28] Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (HS).

Furthermore Andorra, signed on 15 May 1997 in Brussels a Protocol on veterinary matters, which has led to tangible improvements in the conditions applicable to cross-border trade in live animals and products of animal origin. Nevertheless, Andorra has commented that some problems remain, including difficult and complicated administrative formalities. Moreover, Andorra would like greater clarity concerning the treatment of the exports of products of vegetable origin in the EU territory after the adoption of the Law of Animal's Health and Food Security equivalent to EU legislation.

With a view to ensuring the smooth flow of bilateral trade, the EU and Andorra concluded, in December 2010, a Protocol extending the scope of the customs union agreement to customs security measures. This Protocol stipulates that Andorra shall apply customs security measures that are equivalent to the ones in force in the EU. In return, some of the security measures - such as the obligation for traders to present pre-arrival and pre-departure information to customs - are waived for trade between Andorra and the EU.

3.2. Monaco

Having regard to the 1963 Customs Convention between the Principality of Monaco and France[29], Monaco is integrated into the Community Customs territory since 1968[30]. The French authorities are responsible for customs inspection and clearance and for the levying of customs duty for Monaco. Monaco has therefore to apply EU customs law (Customs Code and related EU customs regulations such as the common customs tariff on imports from third countries). Customs declarations are not requested for the movement of goods between Monaco and the Member States of the Union.

In addition, the Franco-Monégasque agreements signed on 18 May 1963 and 26 May 2003 provide that value added tax is set and collected at Monaco on the same basis and using the same rate as in France. The agreements created a shared account of the tax levied in France and Monaco. Monaco is integrated into the European System of VAT.

Preferential trade agreements concluded by the EU with third countries may cause questions/difficulty for goods originating in Monaco. The territorial scope of those agreements is often the territory of the EU and not the territory of the Customs Union. Therefore, Monaco not being part of the EU territory, certain third countries refuse to grant preferential treatment to goods originating in Monaco. In order to avoid this, such agreements should stipulate that the preferential treatment applies to goods originating in the EU customs territory, which includes Monaco.

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29 Convention douanière entre la Principauté de Monaco et la République française (OS n°3038 du 19 août 1963), Journal officiel de la République française du 27.09.1963, p. 8679.

30 Monaco was integrated in the Community Customs territory by Regulation (EEC) No 1496/68 of the Council of 27 September 1968 on the definition of the customs territory of the Community and this was recalled in subsequent Regulations, the latest one being Regulation (EU) No 450/2008 of the European Parliament and the Council of 23 April 2008 laying down the Modernized Customs Code (OJ L 145, 4/6/2008).

Goods originating or being in free circulation in Monaco benefit from the free movement of goods inside the EU. They may however encounter obstacles on EU territory, in particular where the EU has established specific rules harmonizing the laws of the Member States (establishment of the internal market). This explains why the Principality signed a bilateral agreement with the EC in 2003 on the application of certain Community acts on the territory of Monaco[31].

Export of live animals

Monaco faces legal difficulties with the holding of international festivals involving live animals that enter from the EU, such as the *Festival International du Cirque*. According to EU rules, these animals should not be re-exported to the EU because Monaco is a third country and does not have an agreement with the EU in this area. The EU has such agreements with other small states[32]. Their key principles are as follows:

- Imports from third countries into "small-sized countries" must go through a Border Inspection Post in a Member State, which is on the outer frontiers of the EU;
- The small-sized countries apply all relevant provisions of EU legislation;
- Exports from these small-sized countries to the EU are, on this basis, treated as intra-EU trade.

At present, Monaco would only be able to export live animals to the EU via an existing Border Inspection Post in France. The setting up of such a Post would require an arrangement with France and the formal recognition of Monaco as an eligible third country.

Food security

Monégasque companies face difficulties putting animal products or products of animal origin on the EU market, despite Monaco having adopted legislation which is designed to be equivalent to the EU acquis on food security. However, the EU has neither reviewed the Monégasque legislation in detail, nor has it formally agreed that its provisions are being enforced by a competent authority and inspection services. Monaco currently does not participate in the key EU instruments (EFSA and TRACES) that provide for food safety checks[33]. For the time being therefore, Monaco is not authorised to export food of animal origin to the EU[34].

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31 Agreement between the European Community and the Principality of Monaco on the application of certain Community acts on the territory of the Principality of Monaco - OJ L 334 of 19/12/2003.

32 The EU has such agreements with Andorra, San Marino and the Færø Islands.

33 Members of EFSA are 27 EU member states, Norway and Iceland. Countries involved in TRACES are all EU member states, European Free Trade Association (EFTA) countries and Switzerland.

34 The reason for that is the absence of Monaco on the positive list of eligible countries laid down in Commission Regulation 206/2010 (meat), Decision 2005/432 (meat products), 605/2010 (milk products) or Regulation 798/2008 (egg products).

Another option that the Monégasque authorities wish to explore is the conclusion of a sectoral agreement with the EU that would integrate Monaco in the TRACES system (Trade Control and Expert System).

Chemical goods
As regards the REACH Directive, Monégasque companies are unable to register the chemical substances in the central database run by the European Chemistry Agency (ECHA). This has created difficulties for Monégasque companies wishing to market chemical products in the EU. In the absence of the establishment of a registration process directly open to companies from Monaco (similar to that available for companies of Liechtenstein, Norway and Iceland) access to the REACH database and the EU internal market will remain problematic.

Waste
Monaco has highlighted that the application of the EU legislation on waste management[35] creates difficulties for Monégasque companies which would like to export waste to France for treatment/disposal. In application of the customs union with France, Monégasque companies could be assimilated to French companies in order to have access to French eco-organisms for the management of their waste.

Medicinal and cosmetic products
Monaco has reported that Monégasque companies that produce medicinal products for human and veterinary medicine, cosmetics and medical devices, have in some cases experienced difficulties in placing them on the market in the EU. Monaco has therefore raised concerns about possible conflicting interpretations of the EU-Monaco Agreement of 4 December 2003 which covers trade in these products.

Convention CITES
Monaco has raised the issue of EU legislation implementing the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and its effects on Monaco. Monaco is concerned that, in legal terms, the co-existence of a dual customs system has led to discriminatory treatment and legal uncertainty for Monaco and the companies established there.

3.3. San Marino
In 1991 the EU and San Marino concluded an agreement on customs union and cooperation[36]. The previous status of participating in the Community customs territory did not guarantee equivalent treatment of Sammarinese goods from third countries; the

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35 Regulation (EC) N° 2006/1013 of the European Parliament and of the Council of 14 June 2006, Directive (EC) N° 96/2002 on waste electrical and electronic equipment (WEEE) modified by Directive (EC) n° 108/2003 of 8 December 2003.

36 The 1991 Agreement sets up a joint Cooperation Committee with Commission and member states representatives on the one side and Sammarinese officials on the other. This Committee is responsible for administrating the agreement and ensuring that it is properly implemented.

new agreement established a customs union for industrial and agricultural products, with certain exceptions[37]. It is also important to mention that the "Omnibus" decision[38] of the EC-San Marino Cooperation Committee effectively gives San Marino an equivalent position to Member States as far as trade in food, plants and animals is concerned.

Customs Problems encountered by San Marino:
San Marino has identified several customs-related problems. Only some of these problems fall within EU competence, whereas others relate to *inter alia* international customs rules and the practices of private companies. Where the problems raised by San Marino concerning customs issues fall within EU competence, it should be possible to solve them within the framework of the existing agreement.

Technical harmonization
Regarding the areas where European technical harmonization exists, San Marino operators have to rely on representatives established in the Community territory, with whom the technical documents of the San Marino producer are deposited. This generates additional costs for San Marino operators compared to their Community operators.

San Marino companies encounter similar difficulties in marketing chemicals in the EU as Monégasque companies. However, with a view to allowing hazardous chemicals and pesticides to be imported into San Marino and placed on the international market, and in line with the provisions adopted in this regard by the EU, San Marino has recently designated the necessary national Authority with the task of performing the administrative functions under the Rotterdam Convention of 10 September 1998 concerning prior informed consent procedure for certain chemicals. Indeed, these functions also apply to third countries although they are not party to the Convention.

Regarding the areas where no European technical harmonization exists, San Marino cannot rely on the principle of mutual recognition by way of referral to national provisions[39]. San Marino goods are subject to additional preliminary controls and, in case

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37 Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, *Official Journal of the European Communities, L 84, of 28.03.2002, pp. 43-52*; The Agreement contained provisions that were not under the Community competence, thus it had to be ratified by national parliaments as well. In order to enable the customs union, an interim agreement was concluded with the Commission: Council Decision 92/561/EEC of 27 November 1992 on the conclusion of an interim Agreement on trade and customs union between the European Economic Community and the Republic of San Marino, *Official Journal of the European Communities, L 359, 09.12.1992, p. 13*; The 1991 agreement finally entered into force in 2002.

38 'Omnibus' Decision No 1/2010 of the EU-San Marino Cooperation Committee of 29 March 2010 establishing various implementing measures for the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino (OJ ref: L 156/13, 23.06.2010).

39 San Marino does not participate in the European standard organizations as European Committee for Standardization (CEN) and European Committee for Electro-technical Standardization (CENELEC).

of dispute, legal problems may also arise due to the impossibility to invoke this principle, as opposed to Community producers.

Organic agricultural products
San Marino operators dealing with organic agricultural products encounter difficulties when they export or re-export these products to EU countries since they cannot certify them as organic in the same way as EU operators do. More specifically, three categories of business encounter these difficulties:

- Businesses that import products from non-EU countries and then place them on the EU market;
- Businesses that produce organic products in San Marino and then export them to the EU;
- Businesses that process agricultural products coming from non-EU countries and that export processed products to the EU.

With Regulation (EC) No 508/2012 of 20 June 2012, the European Commission has already recognised two Italian accredited control bodies[40] for San Marino for equivalency purposes, under Article 33, paragraph 3 of Regulation (EC) No 834/2007 and Article 10 of Regulation (EC) No 1235/2008 with regard to the following product categories:

- Unprocessed plant products (Suolo e Salute S.r.l.)
- Processed agricultural products for use as food (ICEA)

San Marino intends to submit to the European Commission a request for inclusion in the list of third countries referred to in Article 33, paragraph 2 of Regulation (EC) No 834/2007 and in Articles 7, 8 and 9 of Regulation (EC) No 1235/2008.

To this end, the San Marino has already incorporated into its legal system, via Delegated Decree No 94 of 27 July 2012, EU legislation on the production and labelling of organic products and, more specifically, the following EC Regulations, as well as the relevant amending and implementing acts:

a) Regulation (EC) No 834/2007 of the Council of 28 June 2007;
b) Regulation (EC) No 889/2008 of 5 September 2008;
c) Regulation (EC) No 1235/2008 of the Commission of 8 December 2008.

With a view to fully implementing the above-mentioned legislation, it is also envisaged that Enforcement Regulations be issued by the competent San Marino bodies.

Health sector related products, including pharmaceuticals

[40] Suolo e Salute S.r.l. and Istituto Certificazione Etica e Ambientale-ICEA.

Some difficulties with the movement of goods derive from the fact that the San Marino health authorities are not accredited to carry out the necessary controls and issue customs authorisations in relation to goods bound for San Marino, since also in these areas San Marino cannot benefit from mutual recognition. This problem involves trade in health sector related products, including pharmaceuticals. Moreover, for the purpose of the mutual recognition of experiments regarding these products (with the corresponding inclusion in the EU Database on Clinical Trials – Eudract), it is necessary that San Marino products be recognised by the European Medicines Agency (EMA). Without this recognition these products cannot be marketed in the EU[41].

Cosmetic products

With regard to cosmetic products, San Marino companies encounter some difficulties. As provided for in Regulation (EC) No 1223/2009, companies intending to place their products on the European market may transmit the relevant notification in electronic format to the European Commission through the "Cosmetic Product Notification Portal (CPNP)". From 11 July 2013, this procedure will completely replace the current national notification through paper documents. Given that only companies having their production and/or distribution site in the EU will have access to the CPNP system, San Marino companies will have no access and will therefore only be able to operate in Europe if they establish a registered office an EU Member State. San Marino is very concerned about the potential impact on its economy if this problem is not solved[42].

Value-added Tax (VAT) pre-financing

San Marino has decided to remain outside the EU VAT area for the time being. Companies from San Marino therefore encounter difficulties with the cost of import VAT. Both San Marino operators and purchasers operating on the EU market have to bear additional costs, which derive from the import VAT payment charged on trade with EU Member States. However, in the event that the imported goods are used for taxable activities of the importers, they may deduct the import VAT in their regular VAT returns. Some Member States also allow postponed accounting, which is a simplification allowing operators to account for the import VAT in a VAT return instead of paying it to customs.

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41 The San Marino Ministry of Health plans to communicate information on the updating of the legislation in force on this matter to the EU, based on the meeting of the EU-San Marino Cooperation Committee of 20 October 2011.

42 In the meantime San Marino had already fully incorporated Regulation (EC) No 1223/2009 on the basis of Law No 16 of 27 January 2011 on the production of and trade in cosmetic products.

CHAPTER 4: FREE MOVEMENT OF CAPITAL

This Chapter on the free movement of capital is included for the sake of comprehensiveness, even though the small-sized countries experience very few difficulties in this area. The free movement of capital[43] is at the heart of the Single Market and is one of its 'four freedoms'. It enables integrated, open, competitive and efficient European financial markets and services. For citizens it means the ability to do many operations abroad, such as opening bank accounts, buying shares in non-domestic companies, investing where the best return is, and purchasing real estate. For companies it principally means being able to invest in and own other European companies and take an active part in their management[44]. Capital movements mean any one of the following when carried out on a cross-border basis:

- **Foreign direct investment** (FDI), including investments which establish or maintain lasting links between a provider of capital (investor) and an enterprise (in effect setting up, taking-over, or acquiring an important stake in a company or institution);
- **Real estate investments or purchases**;
- **Securities investments** (e.g. in shares, bonds, bills, unit trusts);
- **Granting of loans and credits**; and
- **Other operations with financial institutions**, including personal capital operations such as dowries, legacies, endowments, etc.

4.1. Capital Movements from the Small-Sized Countries into the EU

As a general rule, the EU places no restrictions on the free movement of capital or payments from the small-sized countries or any other third state. Article 63 TFEU[45] fully liberalises capital movements. It states "within the framework of the provisions of this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited". Art. 63 specifies that the same prohibition applies to payments.

However, some limitations, exceptions and safeguard measures are specified in Articles 64-66 TFEU. In particular, with respect to third countries, Article 64(1) indicates that the extension of the freedom to third countries is not unlimited. The Member States have the right to maintain restrictions on capital movements that existed as at 31 December 1993 in the fields indicated[46]. As for Art 64(2) and 64(3), they provide for a differentiated

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43 In the absence of a definition in the Treaty of 'movement of capital' the Court of Justice of the EU has recognised the nomenclature annexed to the Council Directive 88/361/EEC as having indicative value.

44 http://ec.europa.eu/internal_market/capital/index_en.htm

45 The Treaty principle of free movement of capital has direct effect, i.e. it does not need any implementing legislation at Member States' level. Art. 63 TFEU directly confers rights on individuals, on which they can rely on before national courts. Source: http://ec.europa.eu/internal_market/capital/framework/secondary_legislation_en.htm

46 In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date is 31 December 1999.

decision-making process. Thus, Art 64(2) states that the "…European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures on the movement of capital to or from third countries involving direct investment - including investment in real estate - establishment, the provision of financial services or the admission of securities to capital markets and Art 64(3). The provisions of Chapter 4 TFEU (on capital and payments) are also "without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Treaties" (Article 65(2) TFEU). Please also see the appendix to this chapter for details on specific exceptions. Freedom of establishment for natural and legal persons is dealt with in other chapters.

Finally, when movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of EMU the Council may take safeguard measures not exceeding six months under Article 66 TFEU.

What is more, EU law allows for certain exceptions to the general rule on free movement of capital. For example Art. 65 TFEU provides that the rules on the free movement of capital are without prejudice to the right of Member States to take certain measures or lay down certain procedures, in particular "to prevent infringements of national law and regulations" or those "which are justified on grounds of public policy or public security". In addition, Art. 65(2) TFEU states that "the provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Treaties.

Andorra

Andorra has highlighted several specific concerns, related in particular to establishing or investing in a business, buying real estate or opening a bank account in the EU. From an EU perspective, these points seem rather to be associated with other EU rules, such as on the freedom of establishment (see Chapter 2) or be due to commercial decisions of private companies. Therefore, they appear not to be restrictions on the free movement of capital from Andorra into the EU. Andorra has also pointed out that Regulation 1889/2005 on controls of cash entering or leaving the EU applies to Andorra's borders with France and Spain. These controls are designed to guard against misuse of the financial system and money laundering and are not a restriction on the free movement of capital.

Monaco

Monaco has indicated that it is not experiencing difficulties in this area. On request of the Monaco authorities, France obtained a derogation from Regulation 1781/2006 on cross-border transfers, allowing transfers between France and Monaco to be treated as domestic transfers.

San Marino

The memorandum submitted to the EU by the San Marino authorities highlights several specific concerns. Although these appear in the section on the free movement of capital, from an EU perspective these relate mainly to the freedom to provide financial services.

4.2. Capital Movements from the EU into the Small-Sized Countries

The small-sized countries place certain restrictions or conditions on the movement of capital from the EU. Broadly, these mainly apply to three categories: the real estate sector; financial sector; and corporate sector.

Andorra

A new law on Foreign Investment entered into force July 19, 2012 and opens to foreigners the sector of liberal professions on the basis of reciprocity for Andorrans. Previously, the law on foreign investment of 2008[47] had already streamlined and liberalised the investment regime. However, under the new law, there will still be a prior authorisation requirement and investments that would affect *inter alia* Andorra's sovereignty, security, law enforcement, environment, public health or general interest can be blocked[48]. Foreign investment will also have to fulfil certain criteria, such as the improvement of the competitiveness, technological progress and diversification of Andorra's economy. The new law also foresees a liberalisation of the investment regime as regards: i) investment in real estate; ii) economic rights of non-nationals resident in Andorra; iii) the exercise by non-nationals of a liberal profession.

In general terms, the new legislation contains the following stipulations on foreign investment:

Classes and forms

Foreign investments can be made in cash or non-cash contributions and can be in any of the following forms: (a) direct investment, (b) portfolio investment, (c) real estate investment and (d) other forms of investment.

Collections and payments

The collections and payments arising from foreign investments and their liquidation must take place through banking entities authorised in Andorra or banking entities registered in any of the countries not considered non-cooperative in matters of prevention of money laundering and the financing of terrorism, as defined by the Financial Action Task Force (FATF).

Direct investments

Direct investments consisting of holdings in Andorran companies include the formation of a company; subscription and acquisition of all or part of the company shares or participations, the acquisition of subscription rights over company shares or participations, debentures convertible into shares or participations, or other analogous investments which by their nature grant the right to take up a holding in the capital of the company, and any legal business in virtue of which political rights are acquired.

Portfolio investments

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47 Law on foreign investments in the Principality of Andorra, adopted 8 April 2008.

48 The process will be speeded up from a maximum of two months to one month.

Portfolio investments are free and not subject either to the duty of application for prior authorisation or the duties of formalisation and declaration envisaged in the Law.

Real estate investments
Prior authorisation from the ministry competent in matters of foreign investment is required for investments in real estate to be made by non-resident foreigners; Andorran companies with a majority of foreign holdings in the share capital or voting rights[49]; and branches or other types of permanent establishment in Andorra for non-residents. Prior authorisation from the ministry competent in matters of foreign investment is also required for investments in real estate to be made by legal entities of foreign nationality, including public entities of foreign sovereignty. These investments in real estate must necessarily be linked to the development of the legal entity's activity.

Other forms of investment
Investments classifiable as other forms of investment require prior authorisation from the ministry competent in matters of foreign investment. The requirement of prior authorisation is replaced by subsequent declaration to the Register of Foreign Investments in the case of acquisitions *mortis causa*.

Monaco
According to the agreement between France and Monaco of 14 April 1945 on foreign exchange control, the foreign exchange regulations in force in France automatically apply in the Principality of Monaco. According to article L151-1 of the French Monetary and Financial Code, Monaco is part of French territory for the purposes of foreign exchange and financial relations with third countries.

Thus, as in France, there is no restriction on investments in Monaco from EU countries, which have to be declared for statistical purposes only. However, a prior approval from the French Ministry of Economy is requested for activities within the scope of public authority, or within the scope of one of the following fields:

- activities likely to disturb public order, public safety or national defence interests;
- research, production or sale of weapons, munitions, explosive powders or ingredients.

Investments subject to prior approval are listed in articles R153-1 to R153-5 of the French Monetary and Financial Code.

Lastly, Monaco law provides for an administrative authorisation to do business and registration in the Directory of Commerce and Industry at the time of incorporation of a new activity, whatever the field of such activity.

Portfolio investments
There are no restriction on portfolio investments.

[49] i.e. equal to or greater than 50%.

Real estate investments
There are no restriction on real estate investments.

Banking and financial sector
The Principality of Monaco and France constitute a relatively homogenous market for banking activities. Indeed, under the Franco-Monégasque Convention of 14 April 1945 and exchanges of letters with France in 1963, 2001, 2005 and 2010, French rules for the organisation of the banking sector are applicable in Monaco, and credit establishments located in the Principality are placed under the jurisdiction of the French supervisory authorities. Any investment in the banking sector is subject to prior approval of the French supervisory authorities.

Financial activities in Monaco are governed by Law No. 1 338 of 7 September 2007 as implemented by Sovereign Order No. 1 284 of 10 September 2007, while collective investment undertakings are governed by Law No. 1 339 of 7 September 2007 and Sovereign Order No. 1 285 of 10 September 2007.

A licence for the setting up of financial activities is issued by the independent administrative authority instituted by Law No. 1 338, the Financial Activities Audit Committee (*Commission de Contrôle des Activités Financières*, CCAF).

San Marino
In general, San Marino legislation permits the free movement of capital from and to the EU. Residents in the EU (like other non-residents of San Marino) may transfer and hold capital in San Marino[50]. However, there are some restrictions and conditions on investment in San Marino, which are summarised here by sector of activity.

Portfolio investment
In general, there are no restrictions on portfolio investments in San Marino, including on the establishment, acquisition or management of companies incorporated under San Marino law by EU entities. However, despite the positive assessment expressed by the Moneyval in September 2011, capital flows to and from third countries are still subject to enhanced customer due diligence for anti-money laundering purposes and banks established in San Marino must still comply with specific reporting obligations to the Central Bank in relation to cross-border payments made on behalf of their clients.

Financial sector
The main piece of San Marino legislation on companies and banking, financial and insurance services is Law no. 165 of 17 November 2005. This Law also establishes the conditions to obtain authorisation for the exercise of reserved activities in the banking, financial and insurance sectors. For most reserved activities, the authorisation delivered

[50] Equally, residents of San Marino may transfer and hold capital abroad. Moreover, in both cases the legislation of San Marino allows the opening of accounts in a currency other than the euro.

by the supervisory authority must be followed by a declaration of non-impediment by the Congress of State (Government). The need for this declaration applies both to capital of national and foreign origin. Access to the banking and financial market by foreign financial intermediaries is subject to the conclusion of a cooperation agreement between the San Marino Central Bank and the supervisory authority of the foreign intermediary's country of origin. San Marino insists that this is not a constraint on the free movement of capital from the EU, because this provision mirrors EU legislation in this area.

Real estate sector
The acquisition of real estate by foreign citizens or entities is subject to the authorisation by a state body, namely the Council of the Twelve.

4.3. How Free Movement of Capital is Dealt with in the EU's Relations with Third Countries

EEA Agreement
For the EU, the Agreement on the European Economic Area (EEA) is an important multilateral agreement providing for the free movement of capital and payments. Article 40 sets out this general principle: "Within the framework of the provisions of this Agreement, there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested". There are occasionally derogations or exceptions to this rule if an EU or EEA EFTA State is in difficulties, or is seriously threatened with difficulties, for example as regards its balance of payments[51]. For example, Iceland currently has capital controls in place as a result of the financial crisis.

Other third countries
The EU is committed to the use of bilateral investment dialogues and trade agreements to ensure open investment. Trade agreements are increasingly linked to a framework agreement covering the political elements of a partnership with a third country[52]. The EU's trade agreements with third countries generally contain chapters on capital movements and payments, with provisions ensuring that payments operations remain unrestricted; that transactions related to direct investment remain free of restrictions; and that temporary safeguard measures are only possible in the case of serious difficulties for the operation of monetary and exchange rate policy.

The Lisbon Treaty provides that the EU has exclusive competence on foreign direct investment (Article 207 TFEU). This will allow the EU to negotiate and conclude comprehensive investment agreements with third countries, previously a competence of the Member States. On 7 July 2010 the Commission adopted a Communication entitled

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51 See Article 43.4 of the EEA Agreement.

52 Such as Partnership and Cooperation Agreements and European Neighbourhood Policy Agreements.

"Towards a comprehensive European international investment policy" which outlines the Commission's approach to future agreements.

The replacement of the approximately 1200 Bilateral Investment Treaties (BITs) between Member States and third countries all over the world by EU agreements will be a long term process and require a transition regime. On 7 July 2010 the Commission adopted a proposal for a Regulation establishing transitional arrangements for bilateral investment agreements between Member States and third countries. The Regulation proposal is currently in ordinary legislative procedure. It shall *inter alia* empower Member States to amend BITs in order to remove incompatibilities with EU law.

APPENDIX

In addition to those set out above, specific exceptions to the free movement of capital and transitional provisions are also stipulated in[53]:

- Declaration No. 7 to the Treaty on European Union (1992) on Article 73(d)
- Protocol Nr. 32 to the Treaty on the European Union allows Denmark to maintain existing legislation which restricts the acquisition of second homes by non-nationals.
- Protocol Nr. 6 to the Act of Accession 2003 allows Malta to restrict the acquisition of secondary residences.
- Protocol Nr. 2 to the Act of Accession Finland 1994 allows for specific restrictions regarding the Åland islands, including e.g. the acquisition of real estate

The Acts of Accession foresee transitional measures (allowing some new Member States to keep certain temporary restrictions in some areas, e.g. the acquisition of agricultural real estate by non-nationals) .

[53] Source: http://ec.europa.eu/internal_market/capital/framework/protocols_en.htm

CHAPTER 5: COOPERATION BEYOND THE FOUR FREEDOMS

There is potential to enhance cooperation with the small-sized countries (Andorra, Monaco, San Marino) in support of a wide range of shared objectives in the political, economic, environmental and cultural domains. This chapter reviews some of the existing areas of cooperation between the EU and the small-sized countries such as foreign policy and savings taxation; and highlights issues that the small-sized countries see as problematic for their citizens and companies.

5.1. Cooperation Agreements

Andorra

Of the three small-sized countries, Andorra has concluded the most wide-ranging Cooperation Agreement (2004) with the EU. The Agreement sets out the following areas of possible cooperation: environment; communication; information and culture; education, vocational training and youth; social and health issues; trans-European networks and transport; and regional policy. Art. 8 provides that the scope of the Agreement may be enlarged by mutual consent of the contracting parties. However, in practice cooperation under the Agreement has been limited.

San Marino

The 1991 Customs and Cooperation Agreement[54] between the then EEC and San Marino covers cooperation in the areas of: economic cooperation (focused on SMEs); environmental protection; tourism; communication, information and culture. In practice, cooperation in these areas has been limited. The Agreement also provides for non-discrimination in matters of employment and social security coordination (see free movement of persons chapter). Art. 19 provides that the scope of the Agreement may be enlarged by mutual consent of the contracting parties. However, in practice, cooperation under the Agreement has been limited. For example, there is no cooperation in the field of tourism even though it could be beneficial for both sides.

Monaco

Monaco does not have a agreement with the EU on cooperation, which is mainly carried out on an ad hoc basis.

5.2. Common Foreign And Security Policy

Political dialogue

On the whole, the EU entertains very good relations with the small-sized countries. The small-sized countries have no official high-level political dialogue with the EU, but their missions are accredited to the EU at Ambassador level and senior members of their

[54] Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino (1991).

governments occasionally travel to Brussels for meetings with their EU counterparts[55]. However, no EU delegation is accredited to any of the small-sized countries[56]. The EU is represented in each country by one of its Member States[57].

Foreign Policy

There is no agreement with the small-sized countries on their alignment to EU positions and declarations, but generally they do align of their own accord on a case-by-case basis. As regards cooperation between the EU and the small-sized countries in the framework of international organisations, at the level of the Organization for Security and Co-operation in Europe (OSCE), in June 2010 the EU Presidency (which was being held by Spain at that time) allowed the Permanent Representations of San Marino and Andorra to the Organization based in Vienna to regularly participate in the weekly political dialogue meetings, among ambassadors of EU Member States and also of Canada, Switzerland, Liechtenstein and Norway (like-minded countries). San Marino often supports the EU's proposals for Declarations in the OSCE.

Furthermore, there are contacts between several EU Delegations to international organisations and the small-sized countries. At the UN in New York, the EU Delegation meets on a monthly basis with the "Friends of the EU" group, of which the small-sized countries are members. Cooperation in this area could be developed further. The small-sized countries sent a positive signal in this regard by voting in favour of the EU's proposed UN General Assembly Resolution on enhanced observer status at the UN in 2010. An agreement with the small-sized countries could provide for more systematic cooperation and exchange of information in major international organisations.

The small-sized countries can make an important contribution to strengthening foreign policy cooperation in Europe, such as between the Council of Europe and the EU (focus of San Marino's Chairmanship of the Committee of Ministers of the Council of Europe[58] from November 2006 to May 2007). The forthcoming Andorran Chairmanship of the Council of Europe may provide an early opportunity to explore ways to enhance cooperation between the EU and the small-sized countries on upholding and strengthening democracy and human rights in Europe.

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55 For example, the Foreign Ministers of Andorra and San Marino visited Brussels in, respectively, January and July 2012.

56 By way of comparison, the EU's delegation in Bern is accredited to neighbouring Liechtenstein.

57 In Andorra and Monaco, this is on a six-monthly rotating basis. Italy, as the only EU Member State to have an embassy in San Marino, represents the EU there.

58 This was one of the main objectives agreed upon by the third summit of the Heads of State and Government of the Council of Europe (Warsaw, 16-17 may 2005).

5.3. Specific Concerns of the Small-Sized Countries on Flanking and Horizontal Policies

Environment

Andorra (AD)

Environmental cooperation between the EU and Andorra is covered by Article 2 of their Cooperation Agreement. The potential areas of cooperation include climate change, protection of nature and biodiversity, environment and health, management of natural resources and waste management; with the aim of reconciling the conservation of the Pyrenean environment with economic development. Andorra has expressed an interest in closer cooperation with the EU on environmental protection and is willing to align itself with the EU environmental policies. Andorra pays particular attention to environmental protection, notably in view of the importance of tourism for the economy.

Andorra has significant waste incineration capacity and is interested to provide disposal services for municipal waste originating in Spain, but the export of waste from the EU to third countries (other than members of EFTA) for disposal[59] is prohibited by Regulation (EC) 1013/2006 on Shipments of Waste (WSR).

The General Council of Andorra ratified, on December 14, 2004, the "Law 25/2004 on waste", which aims to be fully compatible with the laws of neighbouring countries and of the EU. Periodically, the government approves modifications of the relevant texts to adapt them to new European legislation.

Environmental impact: a draft law on strategic environmental assessment of plans and programs and environmental assessment is currently underway. The Andorran legislation on environmental issues is inspired by European standards. However, a major development in some areas would be necessary to allow for closer integration of Andorra with the EU.

Monaco

As regards environmental policy, there is no formalised environmental co-operation between EU and Monaco, only some ad hoc co-ordination in the international environmental forums (eg EU-Monaco cooperation to list Atlantic blue fin tuna in CITES Convention in 2009/10). Monaco also faces similar problems as Andorra with regard to the import and export of waste.

San Marino

Cooperation in the field of environment, small and medium-sized enterprises (SMEs) and tourism is covered by the Cooperation and Customs Union Agreement, signed on 16 December 1991.

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[59] EFTA countries are excluded, where special provisions for these countries are included in the Regulation.

San Marino has described the difficulties it faces in exporting special and municipal waste to the EU, due to the complex procedures provided for in Regulation (EC) 1013/2006 on Shipments of Waste (WSR) with which San Marino needs to comply, including as regards the export of small quantities of waste to neighbouring Italian regions. This poses particular problems for San Marino due to the small size of its territory. The existing bilateral agreement with Italy allows San Marino to export special and municipal waste to Italy pursuant to Art. 41(1)(c) of the WSR Regulation, but such shipments are subject to a prior notification and consent procedure[60] (which also applies to waste shipments within the EU), which are particularly burdensome given the geographical and demographic situation of San Marino, as well as its limited quantities of exported waste.

Therefore, San Marino would like to consider the possible application of a simplified procedure. Article 30 of the WSR Regulation provides for the conclusion of border-area agreements between EU Member States or between a Member State and an EEA state, in order to render the notification procedure less stringent. However, since San Marino is neither a member of the EU nor of the EEA, the conclusion of such an agreement with the Italian Republic requires prior notification and consent of the Commission, or a specific decision made by the EU-San Marino Cooperation Committee, in the context of cooperation on matters relating to environmental protection and improvement in accordance with Article 16 of the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, signed at Brussels on 16 December 1991.

Education

Andorra, Monaco and San Marino have raised the issue that in some EU Member States higher university tuition fees apply to students from the small-sized countries than to EU nationals. They would like the non-discrimination principle enshrined in the EU Treaty to be extended to their students. However, it is worth mentioning that even the nationals of acceding states (such as, currently, Croatian nationals) do not enjoy this right. The non-discrimination principle will only apply to Croatian students from the entry into force of its accession Treaty.

In addition, all the three small-sized countries expressed an interest in several of the components of the EU Lifelong Learning Programme[61], an internal EU programme in which, as third countries, they are not eligible to participate. The LLP programme is coming to an end in 2013 and a new programme "Erasmus for all" for the 2014- 2020 period is currently under discussion in the Council and the European Parliament. This future single Programme for Education, Training, Youth and Sport will include an external dimension, with activities open to cooperation with third countries within its

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60 Under Article 42 of the Regulation.

61 Established by the Decision 1720/2006 of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of life long learning (LLP programme).

three key actions (learning mobility, cooperation and policy reform)[62]. It will not be necessary for the three small-sized countries to conclude an agreement with the EU in order that their individuals, organisations and relevant entities can benefit from these new opportunities under the future programme.

Research Cooperation

The small-sized countries have expressed an interest in being able to participate in and access funding from the EU's Research Framework Programme (FP). However, Andorra has commented that the cost of participation is too high. The EU's Framework Programme is open to the participation of research entities from all over the world, including those based in the small-sized countries. Such participation is not conditional upon being an entity from an associated state. The same approach is taken in the Commission proposal for the FP's successor programme for the period 2014-2020, which will be called Horizon 2020. This will also cover innovation (currently managed by the Competitiveness and Innovation Framework Programme).

The legal base and criteria for becoming an associated state are outlined in Art.7 of the Commission's proposal for a Regulation on Horizon 2020. The Commission's proposal contains a provision that limits the possibility of association to very specific groups of third states, including to the EFTA countries fulfilling certain criteria. However, the EEA Agreement stipulates that cooperation in research and technological development shall normally take the form of participation of the EEA/EFTA states in the research framework programmes as "Associated" countries. This means that each EEA EFTA country has to contribute financially to the programme while any of its research entities that are successful in calls for proposal are guaranteed automatic funding. Therefore, there is a certain presumption that if the small-sized countries were to become parties to the EEA Agreement, they would be associated to the Framework programme even though they may not fulfil the criteria set out in Art. 7.

Regional Policy, Social Affairs, Health Policy and Other Issues

Andorra

In the area of regional policy, the EU-Andorra Cooperation Agreement has facilitated cooperation between Spain, France and Andorra in the context of the EU Regional Policy's Operational Programme of cross-border cooperation in the Pyrenees (2007-2013 budget: EUR 168 million). There is potential to deepen this cooperation, which could lead to benefits for people living throughout the region. There are ongoing negotiations on taking part in the SUDOE programme[63].

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62 These actions should support development, regional integration, knowledge exchanges and modernisation processes through partnerships between Union and third countries' higher education institutions as well as in the youth sector; notably for peer learning, joint educational projects and promoting regional cooperation, in particular with neighbourhood countries.

63 The South-East Europe Territorial Cooperation Programme (SUDOE) supports regional development through the ERDF (European Regional Development Fund).

As regards social and health matters, cooperation in those areas is foreseen under the Article 5 of the Cooperation Agreement and proposes an exchange of experts, cooperation between administrations, cooperation between business and training. Andorra's adaptation to the EU's laws on consumer protection requires significant legislative procedures. Andorra would like to align with the EU intellectual property rules, but this requires the adoption of legislation. Andorra is preparing a new law on statistics, based on the model of the European legislation on good practices in statistics, and is interested to cooperate with Eurostat.

San Marino
As a non-EU country, San Marino cannot take part in the EU statistics agency, Eurostat. Its officials cannot enrol in statistical training services organized for that purpose, with negative repercussions on further training of people employed in the public sector.

Monaco
Monaco's only fisherman faces the problem that he is not permitted to fish in the waters surrounding Monaco because he is not a French or Italian national (and therefore not an EU citizen).

5.4. Other Areas of Cooperation

Monetary Agreements
Monetary agreements are the most important bilateral agreements (in two cases renewal of existing agreements) signed recently by the three small-sized countries with the EU, which have committed gradually to incorporate relevant EU acquis[64] into their internal legislation. The implementation of the acquis will be closely monitored by the Commission and will serve to demonstrate the legal and administrative capacity of the small-sized countries to deal with the acquis. The small-sized countries have accepted the exclusive competence of the Court of Justice of the EU for the settlement of any disputes between the parties in relation to the agreements.

Agreements on Savings Taxation
The EU has Agreements on Savings Taxation with the three small-sized countries, which provide for measures equivalent to those laid down in Directive 2003/48/EC on taxation of savings income in the form of interest payments. Within this framework, savings income in the form of interest payments made in these states to beneficial owners who are individuals identified as residents of a Member State of the EU have to be subject to a withholding tax levied by paying agents established on their territory, whose revenue is mostly transferred to the Member States of residence of the individual concerned.

Consultations were held in 2009 with the competent authorities of Andorra, Monaco and San Marino; during which they confirmed their availability to amend their Agreements with the EU in line with the outcome of the Savings directive review ("level playing

[64] As set out in the Annex to each Agreement.

field"). Once a negotiating mandate has been adopted as a result of the ongoing debate at Council level, these consultations will be followed by formal negotiations to update the Agreements.

Anti-Fraud and Tax Information Exchange
The Commission is also seeking from the Council a mandate to negotiate Anti-Fraud and Tax Information Exchange Agreements with Andorra, Monaco and San Marino, on the basis of the experience gained in the framework of similar negotiations with Liechtenstein, taking into account international developments in this area. The Commission is envisaging a two-pillar agreement including not only anti-fraud measures but also comprehensive administrative tax cooperation.

5.5. How Cooperation Beyond the Four Freedoms is Dealt with in the EU's Relations with its Close Neighbours (EEA and Switzerland)

European Economic Area
The EEA is the most advanced economic arrangement that the EU has with third countries. In this context, the EU holds a regular political dialogue with Norway, Iceland and Liechtenstein. The main forum for this dialogue is the biannual EEA Council, which brings together the Foreign Minister of the EU Member State holding the rotating presidency and the Foreign Ministers of the EEA EFTA countries. In addition, political dialogue takes place twice per year with the following working parties: COMAG/MaMa, COEST, COMEM/MOG, COAFR, COWEB, COMEP and COSCE.

The EEA EFTA countries apply, are associated with, or cooperate with the EU on the EU's horizontal and flanking policies (eg research and technological development, information services, enterprise policy, education, environment, social policies, consumer protection, statistics and company law). The following areas are excluded from the scope of the agreement: foreign and security policy; the common agricultural, fisheries and transport policies; EU budget; regional policy; justice and home affairs; taxation and economic and monetary policy. The EEA EFTA countries also participate in EU Agencies and are associated to EU Programmes.

Swiss Confederation
Switzerland has very close relations with the EU on the basis of more than one hundred bilateral agreements on sectoral matters (eg land transport, air transport, research, education, media and culture etc) many of which are without the scope of the internal market. Switzerland has incorporated the EU acquis in a number of non-internal market areas, either on the basis of an agreement with the EU or autonomously. The country cooperates closely with EU Agencies and is associated to some EU Programmes (eg 7th Research Framework Programme, MEDIA, Lifelong Learning and Youth in Action

programmes[65]). The EU signed a bilateral savings tax agreement[66] with Switzerland in 2004. Switzerland does not have a formalised political dialogue with the EU. As regards foreign policy, it tries to keep a profile as a neutral, mediator country, and it does not have an alignment agreement with the EU.

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[65] Agreement between the European Union and the Swiss Confederation establishing the terms and conditions for the participation of the Swiss Confederation in the 'Youth in Action' programme and in the action programme in the field of lifelong learning (2007-2013).

[66] Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.