



ST. MAARTEN

STATEN VAN SINT MAARTEN			
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Par.			

To the President of Parliament,
Mr. Dr. L Richardson,
Parliament Building
Wilhelminastraat 1
Alhier

Uw nummer: Uw brief van: Ons nummer: Afd:

Re: Draft national ordinance for the establishment of the Integrity Chamber
(National Ordinance Integrity Chamber)

Philipsburg, April 9, 2015

Attachments:

Honorable President of Parliament,

On April 8th 2015 the Central Committee meeting was held in Parliament concerning the draft national ordinance for the establishment of the Integrity Chamber (National Ordinance Integrity Chamber).

Members of Parliament (further: MP's) posed questions concerning this draft. As promised I present you herby the answers. Please note, that where similar questions were posed by more than one MP, the answering of these questions have been bundled.

General remarks

First of all Government wants to thank the MP's for their questions. The Government appreciate the concerns as shared by the MP's.

As a general remark on this subject, Government wants to stress that only when a position in an informal relational network plays a decisive role in any decision making process, and the outcome of such a decision, based on objective facts, can be proven to have been differently if such a relation would not have existed, an integrity breach might be found.

Citizens of St. Maarten, as well as the politicians are not asked to derive from their cultural heritage, nor from their upbringing since childhood. Everybody is merely

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asked to abide by the law of the land. This is integrity. The sole purpose of the proposed Integrity Chamber is to investigate possible integrity breaches and provide Government with clear-cut advices on integrity matters, both on policy and where needed on a case-per-case bases. This Government believes the establishment of the Integrity Chamber to be the best way forward to strengthen our young country for now and the future.

As for the proclaimed risk of favoring foreigners in any way, this Government stresses that the rule of equality still applies.

With this national ordinance this Government invites the Parliament to jointly achieve the level of integrity that the people of St. Maarten demand and deserve.

1. Definition of the integrity breach:

MP's (Leonard, De Weever, Wescot-Williams, Jacobs) posed questions concerning the proper definition for integrity breach.

As Government has indicated in the explanatory memorandum to the draft national ordinance, the proposed definition entails the proper balance between the extraordinary challenges on the issue of integrity our community is faced with, and on the other side, the requirement of the rule of law to which the Country is bound. Though the Kingdom Government is currently attempting to draft such a definition aimed at our country, this Government disagrees strongly with the definition as submitted to the Kingdom Council of State due to the absolute lack of objectivity. Particularly the definition on "*integer handelen*" as complying with - undefined - "values and norms" is not acceptable to this Government. To clarify vague norms by using wording which are even less clear is not the route this Government choses to propose.

The Government would like to stress once more that an integrity breach will only be found when decision to act or not to act is entirely based on informal relational networks, when such is not allowed or objectively improper. Helping family and friends does not in itself lead to an integrity breach and therefore cannot be the sole reason to even start an investigation or a pre-investigation.

2. Costs of the Integrity Chamber:

MP's (Leonard, Marlin-Romeo, Jacobs, Marlin) have raised questions on the financial consequences of the proposal.

This Government proposes to warrant the sovereignty of this island and consequently of the Integrity Chamber proposed. Government agrees that financial power provides de facto veto power (*wie betaalt, bepaalt*). We would not like others to have such final control over our internal matters. For this reason this Government rejected the initial offer to cover the entire financial burden for the first four years of the existence of the Integrity Chamber. Instead we have reached a provisional agreement to share this burden. This agreement depends on consensus between the countries on the entire integrity matter.

If such an agreement is not found, we as a country have to carry on the burden. The effects on our budget under these circumstances have already been elaborated upon in the financial paragraph of the explanatory memorandum.

3. Questions concerning the practical way the Integrity Chamber will work

Almost all MPs shared their concerns on the checks and balances provided for in the draft guaranteeing the limitation of the seemingly unlimited powers of the Integrity Chamber (thus endangering the right to privacy, preventing "witch hunts" and issues of unsubstantiated claims or accusations).

As the honorable Minister of Justice has already stated in the meeting of last Wednesday, this is the central issue of (not reaching an agreement on) the draft with Holland. This Government feels very strongly that the human rights as provided for in the Constitution and the international treaties concerned are paramount.

For this reason all necessary guarantees are proposed in the draft. The main protection is embedded in the following articles:

Article 21: The obligation put upon the Integrity Chamber to answer questions relating to the expediency principle ("*opportuiniteitsvraag*") guarantee the prevention of undue, unlawful, unnecessary, unwarranted or unwanted investigations from taking place. As long as the Chamber abides by the national ordinance, it will for that reason not be able to endanger the right to privacy, be able to investigate unwarranted claims, or develop in an organization that can be described as 'hunting witches'.

Article 23: The Integrity Chamber is forbidden to disclose any information that would unlawfully harm the right to privacy as well as in the other instances mentioned.

Article 31: The legal protections provided for will guarantee the individual to question in a court of law the expediency of an investigation (the LAR) before any investigation will be able to develop so far as to destroy privacy or create irreparable damage to reputations. This protection is particularly foreseen in those situations in which the Chamber has the power to demand goods and or information. The Government would respectfully like to draw the attention to the fact that the Integrity Chamber has no power of invading the privacy of anybody's private residence, dwelling or property, nor the power to tap any telecommunication, listen in on conversations or any such powers that are exclusively in the purview of criminal investigative powers. It must be stressed that the Integrity Chamber does not have powers to investigate any criminal wrongdoing, and must, as soon as there is a reasonable suspicion of criminal wrongdoing, hand over any case to the Prosecutor's Office. This follows from well-established jurisprudence that this draft does not deviate from.

4. What is the current integrity policy of Government and is this executed

MP's (De Weever, Marlin-Romeo, Wescot-Williams, Pantophlet, Jacobs, Marlin) requested information on the current functioning of integrity policies and the relationship to existing institutional bodies such as the Integrity Bureau, the Ombudsman and "*vertrouwenspersonen*".

Government stresses that all existing integrity policies are and will remain fully functional without interference from the Integrity Chamber. The added value of the Chamber is merely to warrant the all-encompassing functioning of existing systems and provide Government with advice on possible improvements. If all policies and procedures relating to integrity would be successful, the Integrity Chamber would be superfluous. In the end, advice of the Chamber will lead to its own demise. Government is confident this will be achieved within this governing period.

Questions pertaining to the Integrity Bureau can be answered as follows. The draft national ordinance for the establishment of such a Bureau has been adjusted to come with this draft establishing the Integrity Chamber. The advice of the Council of Advice on previous draft legislation has given Government the opportunity to make the necessary adjustments to fortify that proposed institution. Government has incorporated these adjustments as per the recommendations of Committee Wit/Samson to come with this draft national ordinance

In line with this reasoning the role for the Ombudsman, for "*vertrouwenspersonen*" and for the training of civil servants will not change. The value of these bodies is well-acknowledged by this Government and wholly supported in their continuation.

5. Automatic admission to Sint Maarten ("*toelating van rechtswege*")

MP's (De Weever, Marlin-Romeo, Pantophlet, Jacobs) wanted to know the meaning of article 17 of the draft.

The Government notes that the MP's have focused questions relating to article 17 on the possibility of unfettered admission of Dutch citizens to Sint Maarten. In that regard, the article does not change the current law of the land. Dutch citizens have this right already based on the LTU. The added value of the article is to safeguard admission without delay of necessary expertise which could be found (also) outside the Kingdom.

6. The executing of other advice on integrity in the provided reports

Some members (Wescot-Williams, Jacobs) have raised questions on the status of the implementation of advice provided in the three integrity reports that were provided to Sint Maarten in 2014.

An overview of the actions coordinated by the project bureau, as mentioned in the plan of approach, and the actions as taken by the Integrity Quartermaster, until

now, has been requested and will be provided to parliament before the public meeting on this national ordinance.

7. Appointment of Members of the Integrity Chambers

MP's (Matser, Marlin-Romeo, Heyliger) posed questions concerning the appointment of the Members of the Integrity Chamber.

The Government has proposed the least amount of members possible to reduce costs, whilst guaranteeing enough internal collegial control of the members amongst themselves. The government has for that reason come to the number of three.

The criteria for all the members of the Chamber are the same, as laid down in article 7 through 14. Candidates need to fulfill all the mentioned criteria to be able to be appointed and keep their position.

As to article 5, second paragraph, under a, the Government stresses that the appointment will be done by Sint Maarten. This appointment will be based on the binding recommendation of the Dutch government, but the legal instrument will be the "Landsbesluit sec" of Sint Maarten.

As to article 5, second paragraph, under c, the government expects the two appointed members to resolve any conflict on this issue. Is this not the case, the government will have to reconsider their appointments

8. Public information campaign on to the Integrity Chamber

Some MP's (De Weever, Wescot-Williams) have requested to inform the public sufficiently on their rights and obligations under this legislation.

The Government wants to assure parliament, that after approval of this legislation, the national ordinance will be published in all formal languages of this. Next to that the public will be informed of all their rights and duties through all channels available to government, based on a communication plan as approved by the project bureau.

9. Drafting of the law

Some MP's (Wescot-Williams, Pantophlet, Marlin) have questioned the sovereign drafting of the proposed legislation and the entry into force thereof in relation to the Dutch involvement.

Government has been working diligently and tirelessly on draft legislation on this matter since 10/10/10. There can be no dispute that the draft as submitted to Parliament is entirely drafted, conceived, supported and fought for by Sint Maarten for Sint Maarten. Though recently the Kingdom of The Netherlands as well as The Netherlands has insisted on establishing a law for Sint Maarten, their efforts have left the intentions, views and proposals of this Government untouched. Though some influence of involvement of Dutch input can be detected, due to the cooperative attitude this Government has shown. This influence has not taken away of the essence of our own political will.

Government request the attention of parliament for article 34, where it is regulated that if no final agreement with the Dutch is reached, the Integrity Chamber will become fully Sint Maarten. All Dutch influence in the appointment of members, Dutch privy to information etcetera, will be automatically abolished due to this article. Next to that, Government stresses that the Dutch participation will in any case end four years after the establishment of the Integrity Chamber or after seven years if an evaluation will so conclude.

10. No retroactive effect

MP Matser and MP Wescot-Williams have asked questions on the originally considered retroactive effect. This has been taken out of this new draft.

11. Other questions posed

The Government now answers the technical questions:

- MP de Weever asked for the actual amount of penalties in the third category. As is regulated in article 1:54 of the National Ordinance establishing the Criminal Code, the amount entails a maximum of NAf 10.000,-.
- MP de Weever further asked some questions on the supervisory board. Since this board is abolished in the final draft, there are no costs to the supervisory board, nor any criteria for appointing members in that board. The supervision in the final draft is attributed to the Raad voor de Rechtshandhaving.
- MP Wescot-Williams asked for an elucidation on the object of investigation, as was provided for in the explanatory memorandum of an earlier draft. Government decided to scratch this part of the elucidation from the explanatory memorandum as it was superfluous. To elucidate on the object of investigation, this can be anybody related to government work, being a minister, a parliamentarian, a civil servant or a person working for government or with government in another capacity. Article 22, second

paragraph of the draft regulates to whom the binding advice of the Integrity Chamber will be sent.

- MP Wescot-Williams further asked if the supervision can be attributed to the Raad voor de Rechtshandhaving. Article 3, first paragraph, under c, of the Rijkswet concerned, provides for the possibility of this attribution by national ordinance.
- MP Wescot-Williams further asked if the second consideration should be taken up in article 34. This will be considered.
- MP Wescot-Williams continued with the question if Government does not support the advice of the Council of Advice regarding the binding nature of advises from the Integrity Chamber. For the answer to this question Government refers to the first paragraph of paragraph 1.4 of the "*nader rapport*".
- MP Wescot-Williams with regard to the advice of the Council of Advice, further asked why advices of the Integrity Chamber are not sent to Parliament. For the answer to this question Government refers to the second paragraph of paragraph 1.4 of the "*nader rapport*".

The Minister of General Affairs

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