



# Parliament of Sint Maarten

## Staten van Sint Maarten

**Parliamentary Year 2018-2019-120**

**National Ordinance amending the National Ordinance on the obligation to notify cross-border money transfers in response to recommendations 32 and 33 of the Financial Action Task Force**

**Report  
No. 5**

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance amending the National Ordinance on the obligation to notify cross-border money transfers in response to recommendations 32 and 33 of the Financial Action Task Force.

Parliament considers the present draft to be adequately prepared when the questions below are answered in time for the public meeting so that the draft can be discussed in a public meeting.

The **United Democrats-faction** has taken note of the draft with interest. The faction would like for it to be explained in brief what the changes are in the existing law that is being proposed by the Minister of Justice. What could noncompliance with these recommendations entail? What laws are being proposed to be changed to meet the recommendations of the CFATF? Can that overview be provided?

As it regards to existing legislation and the function of the MOT, if accusations are levied against someone as it pertains to unusual financial transactions, that person writes a letter to the MOT for a response, how long does it take the MOT to reply as it regards to that? Secondly, if accusations are levied against someone, is it in the law that the person can actually write to the MOT and request the information that is leveled against them? What about us, what about Sint



Maarten people? Where do we fall in when these things adversely affect us when we do not have no auto industry, no fishing industry, no telecom industry, no computer industry to fall back on when we mess up the one industry that we have, which is tourism, with all of these controls? To what end do we have a sense of the ability to live free in Sint Maarten? Are these same laws applied in Curacao, Aruba, Saba, Statia? Which islands in the region have these laws?

Next to these type of safeguards that are being sought on Sint Maarten, what kind of safeguards is the ministry pursuing to counter the negative effects of for example correspondent banking and the controls therein and the limitations thereof? What can you, as a small country do, and what is being done to safeguard the local interest where these type of measures are being imposed? What is being put in place here on Sint Maarten to deal with those type of matters? What are the consequences if we do not bring the amendments to the law concerning our international status as country Sint Maarten towards the world? What does it mean if we keep the law as it is and do not support the amendments to the law? Are there any scientific evidence of increasing the amount from 20.000,- to 25.000,- guilders? What more does this bring under light of evidence of money laundering comparing to the 20.000,- guilders that we have now? What other world are we going to open by increasing the amount from 20 to 25?

If the individual can ask for information. Was that change done by Parliament are was that done by the MOT? Can we be provided of a copy of the old law as it was before 2014 and also the amendment?

There is a statement made about *andere voorwerpen* and in the *memorie toelichting* says *overdraagbare zeldzame roerende zaken die in het maatschappelijk verkeer een hoge waarde vertegenwoordigen*, but there is not a sub definition from *overdraagbare zeldzame roerende zaken*. It gives a lot of space to interpretation. Can an explanation be given to how we can make this more evident to work with? In article 2 a strange shift is being made from *aanmelder* to a *melder*. Please explain the move to go from *aanmelder* to *melder*. In article 2 and 8 the terms immigratie- en naturalisatiedienst will be changed to immigratie- en grensbewakingsdienst. Are all departments that are part of grensbewakingsdienst under the competence of the Minister of Justice of country Sint Maarten? In article 4 states *elke vermoeden van witwassen*.



Seeing that there is a shift in technical assistance from Holland, this *vermoeden* gets a cultural weight. So, if we have technical assistance from Holland, how can we guarantee that the interpretation of *vermoeden* is going to be a very objective way of looking at people passing the border? In article 10 there is some space for subjective interpretation in regards to the dossier. It states that *een schriftelijke schikking kan aangegaan worden voor betaling van een geld bedrag ter voorkoming van een strafvervolging*. What is the guarantee in the law that the prosecutor is not going to get a free hand in decision making to deal in an objective way with the cases presented to him? A *schriftelijke schikking* is a dangerous one if it is purely dependent on the subjectivity of the prosecutor.

What else is being done regarding the issue of de-risking as a means that is applied by correspondent banks? What else is being done from Sint Maarten's perspective?

The faction would like to know according to whose law, which country, did we model our draft law?

The **Sint Maarten Christian Party-faction** has taken note of the draft. The faction is of the opinion that it should be explained what the MOT does in Sint Maarten. What went in to the thought process to increase it with 5.000,- guilders? With this new law, what will change in your procedures of the implementation on the ground? How is the 20.000,- guilders being handled now? Is it random checks, is it based on suspicion of someone maybe is going to be travelling via the airport with a certain amount of jewelry? Are information sessions being done with financial institutions and various stakeholders which will be affected by this law? How do we know from the financial institutions what are the effects it is going to have? How is it going to affect the economy? How is it going to affect the financial institutions? How is it going to affect the people? How is it going to affect them with the change in the law vs what we already have on the books?

The **National Alliance-faction** has taken note of the draft with interest. Three changes were mentioned. Why were these changes deemed necessary? The reason for this change is that in relation to facilitating any increase in border control as per agreements made with the Dutch government? Does this amendment, and even this law affect our open border with the French side on the North? How does this then relate to the treaty of Concordia? Within the duty to report, do the persons who keep the sums of money at home fall under a



duty to report? Or is this only specifically for travelling in and out of the country? Are we looking at having and types of control on sums of money, currency, etc. value of property kept within your homes? Can border control agents, customs agents, use this law to stop persons and or vehicles crossing our borders and search them? This considering the hub function of Sint Maarten, have we thought about how this will affect that? In article 5 there is mention of the word *verdenking*, that is a very broad term. Who decides on suspicion? It is said that the Minister has to make a report public, but it does not state how and in which way this report has to be made public. Can that be clarified further?

The law as it stands now, has there been any complaints that are valid complaints from those who are victims or not, to whether this law is too far reaching already? Have we evaluated the law in terms of fairness to the persons that it is being exacted upon? How is this law already being perceived by travellers and would this amendment change that if it is now not seen as a bad thing? Have we looked at any amendments that might deal with making it more traveller friendly?

If you have person that has a 20.000,- dollar wedding ring on, is every person that is going in and out going to be asked to show a receipt of their wedding bands and their watches? How strong is the staff? How is the manpower and budget looking to handle this law effectively on all our borders?

Tourism. Will this law affect the industry that we are trying to protect and keep seeing that we have lost some of it. Would that be affected? That is the business that we are in. Who will be affected by this law? How is this going to benefit Sint Maarten? What is in it for us? What is the necessity?

If someone has a wedding ring that is worth 20.000,- or 30.000,- dollars, are our custom officers trained in order to appraise these jewelry or food or different things? What training do they undergo or do you bring in a third party to do such? Are there any custom officers at the dock in Simpson Bay that brings people from Anguilla checking to see what kind of jewelry they have on or what they are bringing in their bags, considering according to the faction it is a free movement?

Does this law already, the amendment, affect unaccompanied money transactions, for instance at



MoneyGram and Western Union? In recommendation 32 it says it should not, but that leaves an open space in the opinion of the faction. Does it affect it and if it should not what is being done to make sure that it does not, as well as any other money transactions that are being discussed?

Recommendation 32 requires that the authorities who are expected to carry out this law must have the financial, personnel and technical means to be able to do so, and that the country must also have procedures in place to ensure that a high level of professionalism is being portrayed in carrying out this duty as well as that the persons should have high levels of trust and integrity as well as skills. Are we prepared to be able to do so? Is this part of the new or improved protocol agreement on justice where border control is concerned and where will the funding be coming from to be able to prepare our officers to be able to do so? At what areas then will custom officers be placed? What timeline are we looking at for the execution? Is it a limited period of time or is that for the start of the proposed change? How do you decide with all of those people that say they are not carrying or do they not have, that you then decide that you are checking these people or is it random? And how do we see this as really a way of stopping money laundering or funding of terrorism? How does this law affect those two things? Can the laws in the penal code affected be presented in an overview? Can an overview be provided as to which articles in the penal code affect this law, what they mean and how they are being proposed to change as well?

How are we to believe that this law has no consequence on the treaty of Concordia? Is this in the ordinance? Where is the proof of that?

What is the penalty or fine for simply just not reporting or do you automatically become labelled?

The **United Sint Maarten Party-faction** has taken note of the draft with interest. There are elements in this law, if approved by Parliament, that can further be changed by the government and that will not need parliamentary approval. Can we get confirmation on what the purposes were of adding these parts to the law? What is the legal basis for Sint Maarten's compliance with any of the recommendations made here? Has the ministry considered that some of the recommendations may not fit within the legal system of Sint Maarten, or the cultural system, or the financial system or the economic system? Based on the recommendations from the



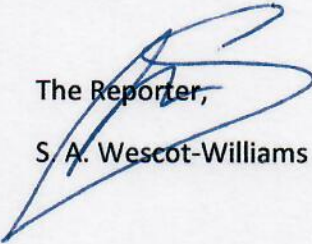
Financial Action Task Force, was there any interaction back from government highlighting where some of these recommendations or legislative points might not be applicable to Sint Maarten?

Is the ministry familiar with our connectivity with Saint Barths? What happens when somebody lands on a yacht, they come off and they have a 30.000,- dollars watch on them? Do they now have to produce a receipt at that point? Has that practicality been looked into? How are these practicalities been taken into account in this law?

Has there been any synergy to ensure that both proposed laws - the Ministry of Finance with the Common Reporting Standard and the Ministry of Justice working on this - do not overlap or contradict? In terms of the criminal code, is the criminal code going to be adjusted as well concurrently with this or is it working within the scope of the criminal code? The law speaks about the minister making a report *openbaar*. How detailed will this information be and have we ensured that none of that information contradicts with the right to privacy of citizens? Have we ensured that we are not trampling on those rights to privacy?

This report is to be considered the Final Report.

Stipulated in the meeting of the Central Committee of February 28<sup>th</sup>, 2019.

  
The Reporter,  
S. A. Wescot-Williams