

Linette A. Gibs

Subject: FW: Landsverordening tot aanvaarding van het voorstel van rijkswet van het lid Van Laar tot wijziging van de artikelen 14 en 38 van het Satuut voor het Koninkrijk der Nederlanden

Attachments: PAR Lid van Laar20181120_16410653.pdf

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From: Garrick Richardson
Sent: Tuesday, November 20, 2018 5:00 PM

From: Horsford, Dee Ann [<mailto:DeeAnn.Horsford@sintmaartengov.org>]
Sent: Tuesday, November 20, 2018 4:51 PM
To: Garrick Richardson <Garrick.Richardson@sxmparliament.org>
Cc: Marlin-Romeo, Leona <Leona.Marlin-Romeo@sintmaartengov.org>; de Cuba, Luis <Luis.deCuba@sintmaartengov.org>
Subject: Landsverordening tot aanvaarding van het voorstel van rijkswet van het lid Van Laar tot wijziging van de artikelen 14 en 38 van het Satuut voor het Koninkrijk der Nederlanden

Good Day All,

On behalf of Prime Minister Leona Romeo Marlin, please see attached document regarding the abovementioned subject.

Dee-Ann Horsford
Secretary



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**MINISTER OF GENERAL AFFAIRS
MINISTER VAN ALGEMENE ZAKEN**

Aan: De Voorzitter der Staten
Wilhelminastraat 1
Alhier

Datum: Philipsburg,
Kenmerk: --
Onderwerp: Onderwerp: ontwerp van Landsverordening tot
aanvaarding van het voorstel van rijkswet van
het Lid Van Laar tot wijziging van de artikelen
14 en 38 van het Statuut voor het Koninkrijk
der Nederlanden

Bijlage(n): 1

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Geachte mevrouw Wescott-Williams,

Hierbij bied ik u de nota naar aanleiding van het verslag aan inzake het ontwerp van Landsverordening tot aanvaarding van het voorstel van rijkswet van het Lid Van Laar tot wijziging van de artikelen 14 en 38 van het Statuut voor het Koninkrijk der Nederlanden.

DE MINISTER VAN ALGEMENE ZAKEN



LEONA ROMEO-MARLIN



MINISTER OF GENERAL AFFAIRS

Minister van Algemene Zaken

Nota naar aanleiding van het verslag van het ontwerp van Landsverordening tot aanvaarding van het voorstel van rijkswet van het lid Van Laar tot wijziging van de artikelen 14 en 38 van het Statuut voor het Koninkrijk der Nederlanden

ANSWERS TO THE QUESTIONS OF THE FACTIONS OF PARLIAMENT

The United Democrats-faction

The faction is correct in its statement that this proposal of kingdom law has a long history. It was first introduced in the Kingdom Parliament in the year 2000 by the former member of the Second Chamber Gerritjan van Oven, and adopted by the member of the Second Chamber Roelof van Laar 15 years later. The faction asks if Government has heard of anything regarding the Dispute regulation. The answer to this question is yes. Government has received a proposal of a kingdom law containing a legal procedure for the handling of disputes between the (Caribbean) countries and the Kingdom, and also an advice of the Council of State of the Kingdom. These documents are still under embargo within the Council of Ministers of the Kingdom, which means that Government can not share them yet with Parliament. This counts for all Governments of the four countries of the Kingdom. These documents have to be discussed first in the Council of Ministers of the Kingdom, before the Parliaments of the four countries of the Kingdom can take notice of them. Government assures Parliament that as soon as the embargo has been lifted, that Government will share all documents and information concerning the proposal of a dispute regulation with Parliament. Government and Parliament will have to work very closely together on this matter. I will approach the Chairperson of Parliament as soon as possible to make the necessary arrangements.

The faction also asks if the Government can clarify the fact that the Kingdom Council of Ministers can execute kingdom laws and decrees without having a legal basis in the law. It is a fact, that the Kingdom Council has this authority at the moment. The two most important examples of those kingdom decrees containing general measures are the Kingdom Decree regulating extraditions for the Caribbean countries and the Kingdom Decree regulating the Coast Guard of the Caribbean. The

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proposal of van Laar is aimed to end the issuing of decrees by the Kingdom Government without a legal basis in a kingdom law.

Concerning the possibility for individual Members of Parliament of the countries to submit an initiative Kingdom law in the Second Chamber of the Parliament of the Netherlands, Government reacts as follows. The Member of Parliament of Aruba Mr. Bikker submitted an amendment in the Second Chamber to make this possible by an amendment of the Charter of the Kingdom, during the handling of the initiative kingdom law of van Laar. Mr. van Laar was of the opinion that the proposal of Mr. Bikker did not coincide with the topic of his proposal, and that it would take too much time to request an advice from the Council of State. Such a topic as an amendment of the Kingdom Charter, deserves a legislative procedure of its own. He asked Mr. Bikker to withdraw his proposal and to discuss it during IPKO meetings. Mr. Bikker agreed in the end, and withdrew his proposal. That means that this topic is not in discussion right now.

Government does not understand the observation of the faction that this law seems to be creating more Democratic deficit, and that the Netherlands will be interfering more in Sint Maarten's business. Government can affirm that this proposal of kingdom law has no negative consequences for Sint Maarten's autonomy. It only creates a new legislative rule for the Government of the Kingdom to comply with when issuing kingdom decrees containing general measures.

It is not easy to give examples of the "extreme circumstances" (buitengewone gevallen van dringende aard). The Council of Advice of Sint Maarten pointed out in its advice that the explanatory memorandum does not explain what these extreme circumstances are. This is also the case with the explanatory memorandum of the proposal of van Laar. Government reacted as follows in the further report (nader rapport) on this advice of the Council: The Government chooses not to go into details on this issue. Firstly, because the proposal of van Laar itself does not contain any explanation, nor did the advice of the Council of State of the Kingdom. An explanation in the explanatory memorandum of the draft national ordinance, that is not in accordance with the proposal of van Laar, has no binding consequences for the kingdom law. The concept 'extraordinary cases of urgent character' implies that the Kingdom Government has to specify such extreme circumstances that justify a deviation from the rule that a legal base in a kingdom law is required for issuing such a kingdom decree.

The National Alliance-faction

Democratic deficit within the Kingdom can be defined as follows: it is the constitutional structure in het Kingdom where the (equal) countries forming part of the Kingdom do not have the same

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constitutional rights, in the sense that the Netherlands' Parliament and Council of Ministers have full political power over the Caribbean countries, including higher supervision and excluding enough participation in the legislative decision-making. Those countries do not have a (fair) dispute settlement in case the Netherlands violates the Kingdom Charter or other kingdom regulations.

The proposal of van Laar will not diminish the existing democratic deficit. It will only include an important principle of a democratic constitutional state, namely that the Government of the Kingdom cannot issue a kingdom decree containing general measures if there is not a legal basis for that in the Kingdom Charter or another kingdom law. This legal principle exists in all the countries of the Kingdom, but until now not in the Kingdom itself.

According to Government, the most important kingdom law to increase equality in the Kingdom will be the kingdom law for dispute settlement between the countries and the Kingdom, based on article 12a of the Kingdom Charter. The structure of this kingdom law must, however, include an independent institution as arbitrator with the authority to issue binding and final decisions. The Council of Advice of Sint Maarten states in its advice, that the Caribbean countries do not have the right of co-decision when it comes to legislation on kingdom level. If we want to terminate the democratic deficit within the Kingdom completely, according to the Council of Advice, it is necessary to create a real Parliament of the Kingdom. The Council states that this topic falls, however, out of the scope of the proposal of van Laar. Government wants to now focus fully on the Kingdom law for the settlement of disputes between the countries and the Kingdom to make sure that the Caribbean countries will have a fair legal procedure of dispute settlement within the Kingdom.

The members of the United St. Maarten Party

Nor in the proposal of kingdom law of van Laar nor in the draft national ordinance to accept the proposal of van Laar is there any provision to allow Sint Maarten to object an intended imposition of higher supervision. Nor does the Kingdom Charter include such a procedure. There are not many kingdom laws that include such a procedure. The best known, is the appeal procedure in article 26 of the Kingdom law financial supervision Curaçao and Sint Maarten.

Respectfully,

MINISTER OF GENERAL AFFAIRS,

Leona Romeo-Marlin



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