

STATEN VAN SINT MAARTEN			
Ingek. 22 MAR 2019			
Volgnr. 151778/18-19			
Par.	St	is	krj.

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

Reaction to the Report

No. 6

Government is grateful that Parliament in its meeting of the Central Committee exchanged views with Government on the Draft National Ordinance amending the National Ordinance on the obligation to report cross-border money transfers above in response to recommendations 32 and 33 of the Financial Action Task Force. Government is also grateful that Parliament considers the present draft to be adequately prepared when the questions below are answered so that the draft can be discussed in a public meeting.

Government would like to start her reaction with a brief introduction. The executive director of the secretariat of the Caribbean Financial Action Task Force (CFATF) was present at the above-mentioned meeting of the Central Committee. The state of affairs at this moment is that if Sint Maarten fails to approve the draft laws, the CFATF plenary meeting will issue a public statement in May of 2019. A public statement places a country on the list of high-risk or non-cooperative jurisdictions because it is not in compliance with the 40 recommendations of the FATF. This means that all 205 members (countries and jurisdictions) of the FATF are instructed and therefore obliged to monitor and if they deem it necessary, stop all financial relations with that country within six months; this to protect their financial systems. This information caused Government to submit to Parliament the draft Landsverordening Meldpunt Ongebruikelijke Transacties (2018-2019-124) and the draft Landsverordening bestrijding witwassen en terrorismefinanciering (2019-2019-125).

Government urges Parliament to avoid getting a public statement at all costs. The best way to impress upon the CFATF that Sint Maarten is of good will is to approve the three draft laws concerned before March 23rd 2019. The deadline to inform the CFATF plenary meeting of Sint Maarten's compliance is set by CFATF at March 27th 2019. Furthermore, apart from the abovementioned and present draft laws, there are three additional draft laws for Parliament to approve, before Sint Maarten is fully compliant. See the first reaction below.

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?

The proposed changes in the already existing laws are primarily meant to comply with FATF Recommendations 32 and 33. The amendments consist of:

1. Increase in the amount of money and high value goods that must be reported to Customs;
2. Jewelry and high value goods have been included the draft law;
3. Possibility to report in digital form has been included in the draft law;
4. The work relationship between Customs and the FIU has been clarified;
5. Customs must publish statistics concerning the implementation of the law;
6. The procedure of confiscation of the not-reported money is legally embedded.

The answer to the question concerning what non-compliance with the 40 recommendations entails was given in the introduction. Non-compliance will lead to a public statement for Sint Maarten.

What laws are being proposed to be changed to meet the recommendations of the CFATF are the following:

1. Landsverordening tot wijziging van de Landsverordening aanmeldingsplicht grensoverschrijdende geldtransporten (2018-2019-120);

2. Landsverordening Meldpunt Ongebruikelijke Transacties (2018-2019-124);
3. Landsverordening bestrijding witwassen en terrorismefinanciering (2019-2019-125).
4. Landsverordening aanscherping bestrijding terrorisme en enige andere noodzakelijke aanpassingen. This draft will amend the Penal Code. The draft will be submitted to the Council of Advice as soon as possible.
5. Herzieningslandsverordening Boek 2 Burgerlijk Wetboek. This draft will amend the Civil Code, in order to comply also with the OESO-standards to ban bearer shares, not listed in a register of shareholders. This draft will be submitted to Parliament as soon as possible.
6. A review of the Wetboek van Strafvordering. This draft has been submitted to the Council of Advice for the third time, and will be submitted to Parliament as soon as possible.

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?

Normally it will take two weeks to answer any letter that can be responded without further investigation.

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?

The 205 FATF members world wide have similar anti money laundering and counter terrorism financing laws.

Information that is leveled against an individual is not available to the public. It will be available to the person concerned in case the public prosecutor decides to prosecute.

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?

The answer to these questions was provided in the Introduction.

In the end Sint Maarten will be added to the list of high-risk and non-cooperative countries, together with Iran, North Korea and Myanmar.

Is 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 20.000 to 25.000 guilders?

The answer is: the increase in this amount is proposed based on the amendment in 2012 of FATF Recommendation 32, due to devaluation of money. The increase in the amount establishes the obligation to report money, jewelry and other high value goods to Customs when the value amount is NAf 25.000 or higher. In case the Customs carries out its controls and a suspicion of money laundering or terrorism financing arises, then Customs will submit a report to the Public Prosecutor's Office and the MOT.

If the law was changed so that an individual cannot ask for information in the registry, was that change done by Parliament or 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?

The amendment was done by the Landsverordening van de 23ste juli 2014 tot wijziging van de Landsverordening melding ongebruikelijke transacties in verband met de voorgenomen toetreding tot de Egmont Group (Afkoningsblad 2014, GT no. 51).

A statement was 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 for '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 the explanatory note several examples were given, like very old and/or expensive art, ancient memorabilia and very rare stamps. Society will not have a problem with defining high value goods.

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 the explanatory note the Minister has indicated that the word 'aanmelder' is old-fashioned in Dutch, as it means nowadays 'log in', 'sign up' or 'apply'. The word 'melder' is more in line with the significance in this case of the reporting to Customs of money or high value goods.

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?

Yes they are.

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 strafvervolgning. 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.

Any action by an individual in itself carries the risk of a subjective judgment. This risk can only be dwarfed by better training, peer review, judgment by multiple people, and so on.

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

Sint Maarten must see to it that it is technically compliant; this starts with the adoption of updated national anti-money laundering and counter terrorism laws, to serve as the legal basis of requirements on the financial institutions and DNFBPs. These institutions are then covered by prudential anti-money laundering and counter terrorism financing supervision. Furthermore government must execute the national risk assessment (FATF recommendation 1) to periodically establish where the high risk are in its financial system and take measures to properly supervise these sectors to protect its financial system.

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

All countries model their anti money laundering and counter terrorism laws to the 40 FATF Recommendations. These 40 recommendations are there specifically to deal with the effort of a FATF member to avoid being marked as a high risk or non-cooperative country.

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.

The MOT is a central national authority that receives reported unusual transactions. The MOT resorts under the ministry of Justice, and is managed by a Head with tasks as reported in the National Ordinance reporting unusual transactions. The Office's task is:

- a. to collect, record, process and analyze the data it obtains in order to see whether these data could be important in preventing and investigating money laundering or the financing of terrorism and underlying crimes;

- b. to provide data in accordance with the provisions set under or pursuant to this national ordinance;
- c. to inform a party that has made a Report in accordance with section 11 with a view to proper compliance with the Report obligation about the conclusion of the Report. In that case, the party is only informed whether data has been provided in accordance with part b;
- d. to investigate developments in the areas of money laundering and terrorism financing and investigate improvements in the methods of preventing and tracking down money laundering and terrorism financing;
- e. to give recommendations, having heard the relevant regulators or professional organisations, for the relevant industries concerning the introduction of appropriate procedures for internal control and communication and other measures to be taken to prevent use of the relevant industries for money laundering or the financing of terrorism;
- f. to provide information to the industries and professional groups, the persons and institutions charged with supervising compliance with this national ordinance, the public prosecution department, the civil servants charged with tracking down criminal offences and the public concerning the manifestations and prevention of money laundering and the financing of terrorism;
- g. to maintain contact with foreign government-appointed police and non-police authorities that have a duty similar to that of the Office;
- h. to maintain contact with and participate in meetings of international and inter-governmental agencies in the area of combating both money laundering and the financing of terrorism;
- i. to issue a report annually on its activities and its plans for the coming year to the minister and to bring this report to the attention of the Minister of Justice.

What is behind the amendment from NAF 20.000,00 to NAF 25.000,00?

The FATF increased the threshold amount to USD 15,000/Euro 15.000 based on the decrease in value of money in the past decade. Furthermore, the reporting system has been simplified, because it has been digitalized.

With this new law, what will change in your procedures of the implementation on the ground?

It concerns an amendment to the threshold amount and the execution of controls by Customs. Not much changes in the procedures. The Customs is being technically assisted by the Customs of the Netherlands and therefore receives training and assistance from them.

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?

The Customs officer decides, based on passenger behavior or otherwise, to check a passenger once there is a suspicion of money laundering or terrorism financing. After the facts establish the suspicion, the Customs authority consult with the Public Prosecutor who decides on the sanction (fine or prosecution).

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?

This concerns an amendment to an existing law; the changes will not make a big difference on the travelling of people and goods. Furthermore, government will receive feedback from its Customs Department on the implementation of the amended law.

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?

As stated in the introduction the draft law has no other reason than to comply with the FATF Recommendations, and to avoid a public statement by the CFATF by May 2019, that will have 205 other member countries reviewing their financial relations and when deemed necessary cutting ties with Sint Maarten.

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?

As it has been since 2010, this law does not affect the open border with the French side. The Treaty of Concordia is not affected. The law only affects the transport of large amounts of money and high value goods while crossing the border at any harbor or airport in Sint Maarten, as it does the same in the French side, because similar laws are applicable in Saint Martin FWI. Of course, as the Republic of France is also a member of the FATF, and the Republic also has the same obligation to comply with the international standards, the 40 FATF Recommendations. The law does not affect money or high value goods in any house in Sint Maarten, as it only affects cross-border transports. Border control agents and Custom officers may stop persons and luggage while crossing the border, travelling through the airport or any harbor.

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 Minister of Justice, who is responsible for Customs, will publish a anonymized report with statistics that can be sent to Parliament and other authorities concerned.

The law as it stands now, have 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?

Government has not received complaints, except from the money launderers who got caught. Travelers who are not in agreeance with the decision of the Customs can challenge it by going to court. Evaluation of the law was done by the CFATF in 2012 and the outcome was that it was not in compliance with the FATF Recommendations 32 and 33. To avoid a public statement by the CFATF in May 2019, in which all other countries will be instructed to review their financial relations with Sint Maarten and possibly to cut their financial ties with Sint Maarten, this draft law has been submitted to Parliament for approval.

If you have a person who 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?

The law will be implemented in phases in a year's time, since Customs officers will be further trained in the execution thereof. A Customs officer will then be able to apply the law correct. After the amendment of the ordinance, a person traveling to and from Sint Maarten to St. Barth's who carries an amount of money, precious metals, jewelry, other rare and movable property, or bearer negotiable instruments equal to or exceeding the threshold amount of NAf 25.000,⁰⁰, has the obligation to report this to the Customs.

How strong is the staff? How is the manpower and budget looking to handle this law effectively on all our borders?

Customs Sint Maarten is being assisted by the Customs authority of the Netherlands as was agreed upon after the passing of hurricane Irma. During this time recruitment of personnel will continue. The technical assistance consists of working alongside Customs Sint Maarten, and training. The training includes Customs skills upgrading modules, integrity and work ethics and money laundering and terrorism financing related modules given by the MOT.

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.

No it will not, since anti money laundering and counter terrorism financing measures are being implemented in the laws of 205 FATF members (countries and jurisdictions).

Who will be affected by this law?

Under the current ordinance, a local or international passenger who travels to or from Sint Maarten with a cash amount of NAf 20.000,⁰⁰ or higher, has the obligation to report this to the Customs authorities. With the amendment of the ordinance the threshold amount to be reported by the passenger has been increased from NAf 20.000,⁰⁰ to NAf 25.000,⁰⁰.¹ The amendment also includes that the passenger is obligated to report when he/she travels with (a) precious metals, (b) jewelry, (c) other rare movable property or bearer negotiable instruments valued at NAf 25.000,⁰⁰ or higher.

How is this going to benefit Sint Maarten? What is in it for us?

After the amendment of the ordinance a passenger will be obligated to report when he/she travels in or out of Sint Maarten with (a) cash (b) precious metals, (c) jewelry, (d) other rare movable property or € bearer negotiable instruments valued at NAf 25.000,⁰⁰ or higher. Sint Maarten will then be in compliance with the 40 FATF Recommendations and not run the risk of being branded a high risk or non-cooperative country.

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?

The law will be implemented in phases in a year's time, since Customs officers will be further trained in the execution thereof. A Customs officer will then be able to apply the law correct. The training that Customs the Netherlands is providing includes Customs skills upgrading modules, integrity and work ethics and money laundering and terrorism financing related modules given by the MOT.

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?

This law does not affect MoneyGram or Western Union cash money transports. The money remittance companies fall under the supervision of the Central Bank of Curaçao and Sint Maarten and notification of the competent authorities is an obligation.

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?

The explanatory note states the following:

With the amendment of the Ordinance there are financial consequences for the country Sint Maarten of around NAf 75,000,-. Customs Sint Maarten will, in cooperation with the Public Prosecutor's Office, spend this amount for the purchase of vaults at the airport and at the seaport, and for additional training for Customs officers. These consequences for the national budget are not to be funded from Government's regular budget. In section M of the present draft law a new article 10 is proposed, which states that the funds that Government 'acquires' in the application of this Ordinance will benefit the Crime Fund from which the costs will be covered.

This includes the amount of money that the offender pays to avoid criminal prosecution, as well as the money and the proceeds from the sale of confiscated precious metals, jewelry or other high value objects, or that the offender has renounced to prevent further criminal proceedings.

It is difficult to predict how successful the law enforcement and prosecution authorities in the implementation of this National Ordinance will be, but Government assumes that there will be an annual income for the Crime Fund of an average of NAf 100,000,-. On 14 April 14th 2016, a Colombian money courier renounced to the police more than USD 200,000 that he had not reported. All in all, there will be enough funding for a better training and equipment for Customs officials, and other authorities concerned.

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?

The amendment of the ordinance has no consequences for the Treaty of Concordia.

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

The penalty is NAf 1 million max and there is no specific labelling.

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?

As stated in the introduction, it is not a question of whether the international standards embedded in the 40 FATF Recommendations, match well with the legal, cultural, financial or economic system of Sint Maarten. As part of the global financial system, and based on the signed Memorandum of Understanding, Sint Maarten must comply fully with the 40 FATF Recommendations.

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?

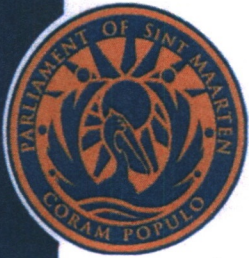
After the amendment of the ordinance, a person traveling to and from Sint Maarten to St. Barth's who carries an amount of money, precious metals, jewelry, other rare and movable property, or bearer negotiable instruments equal to or exceeding the threshold amount of NAf 25.000,⁰⁰, has the obligation to report this to the Customs and follow the instructions given by the authorities.

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 synergy between the remaining six drafts, needed to fully comply with the FATF Recommendations has been secured by proper alignment between the competent authorities within the Ministry of Justice. The relationship with the Criminal Code has been elucidated in an earlier answer to this question.

The law speaks about the minister making a report public. 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?

The report will publish only statistics. Statistical information is never traceable to individuals.



Parliament of Sint Maarten

Staten van Sint Maarten

Aan de Minister van Justitie
De heer V.H.C. de Weever
p/a Ministerraad
Philipsburg

UV/248/2018-2019

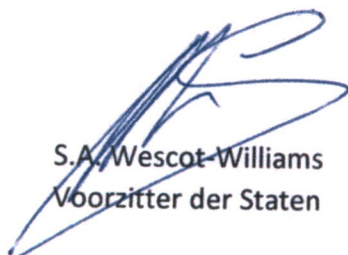
Philipsburg, 14 maart 2019

Betreft: Aanbieding afschrift verslag Olv
tot wijziging van de Landsverordening aanmeldingsplicht
van grensoverschrijdende geldtransporten naar aanleiding
van de aanbevelingen 32 en 33 van de Financial Action Task Force

Excellentie,

Middels deze doe ik u toekomen afschrift van het verslag van het Ontwerp van de Landsverordening tot wijziging van de Landsverordening aanmeldingsplicht van grensoverschrijdende geldtransporten naar aanleiding van de aanbevelingen 32 en 33 van de Financial Action Task Force (Zittingsjaar 2018-2019-120).

Ik verwijs u korthedshalve naar de inhoud ervan.



S.A. Wescot-Williams
Voorzitter der Staten



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 strafvervolgning*. 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 28th, 2019.

The Reporter,

S. A. Wescot-Williams

