## Linette A. Gibs

**Subject:** FW: antwoorden vragen tweede ronde ontwerp-Lvo bestuurlijke handhaving & samenvatting

**Attachments:** Summary General explanation, summaryNational Ordinance administrative enforcement1482017.docx; ATT00001.htm; AntwoordenQA Part 2 Parliament NationalOrdinanceadministrativeenforcement1482017.docx; ATT00002.htm



**From:** Ann A. Groen-Gumbs
**Sent:** Monday, August 14, 2017 12:39 PM
**To:** Linette A. Gibs

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**From:** S. Agatha Williams [mailto:williamssaw@hotmail.com]
**Sent:** Monday, August 14, 2017 11:45 AM
**To:** Ann A. Groen-Gumbs
**Subject:** Fwd: antwoorden vragen tweede ronde ontwerp-Lvo bestuurlijke handhaving & samenvatting

**From:** "Dijkstra, Levinus" <Levinus.Dijkstra@sintmaartengov.org>
**Date:** August 14, 2017 at 11:10:03 AM GMT-4
**To:** "sarah.wescot-williams@sxmparliament.org" <sarah.wescot-williams@sxmparliament.org>
**Cc:** "Boasman, Rafael" <Rafael.Boasman@sintmaartengov.org>, "Rafael Boasman (boasmanr@gmail.com)" <boasmanr@gmail.com>, "Thompson, Rueben" <Rueben.Thompson@sintmaartengov.org>, Vidjai Jusia <vidjai.jusia@justice.gov.sx>
**Subject: FW: antwoorden vragen tweede ronde ontwerp-Lvo bestuurlijke handhaving & samenvatting**

Voorzitter,

Nu de griffier afwezig is, zend ik u beide documenten toe, met het vriendelijke verzoek deze door te doen geleiden aan de Staten -leden.

Met vriendelijke groet,

Len Dijkstra

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**From:** Dijkstra, Levinus
**Sent:** Monday, August 14, 2017 10:55 AM
**To:** 'nancy.joubert@sxmparliament.org' <nancy.joubert@sxmparliament.org>
**Cc:** Boasman, Rafael <Rafael.Boasman@sintmaartengov.org>; Rafael Boasman (boasmanr@gmail.com) <boasmanr@gmail.com>; Thompson, Rueben <Rueben.Thompson@sintmaartengov.org>; 'Vidjai Jusia' <vidjai.jusia@justice.gov.sx>
**Subject:** antwoorden vragen tweede ronde ontwerp-Lvo bestuurlijke handhaving & samenvatting

Dag Nancy,

Morgenmiddag, aanvang 14.00 uur, wordt de behandeling van bovenstaand ontwerp in de Staten voortgezet.

Bijgaand de antwoorden van de vragen in de tweede ronde, alsook de door de voorzitter van de Staten verzochte samenvatting (in het Engels).

Zou je mij de ontvangst van deze documenten willen bevestigen, waarvoor bij voorbaat dank.

Met vriendelijke
groet,

**Mr. Len Dijkstra LL.M, MBA**

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*Please be advised that this is an English courtesy translation of the general part of the explanatory memorandum of the National Ordinance on Administrative Enforcement (Landsverordening bestuurlijke handhaving). Only the original version in the Dutch language has legal value.*

# General explanation, summary National Ordinance administrative enforcement

**The Honorable Minister of Justice, Rafael A. Boasman**

**August 7th, 2017**

**Ministry of Justice**

**The Cabinet of the Minister of Justice**

*Please be advised that this is an English courtesy translation of the general part of the explanatory memorandum of the National Ordinance on Administrative Enforcement (Landsverordening bestuurlijke handhaving). Only the original version in the Dutch language has legal value.*

## Introduction

Article 105 of the Constitution of St. Maarten stipulates that general rules of administrative law shall be established by national ordinance.

Administrative enforcement is given a lot of attention for a while now in SXM and is already incorporated in several recent national ordinances. But some essential segments of administrative law can currently only be enforced by means of criminal penalties. However, the criminal enforcement of administrative law is strongly being limited by an already overburdened criminal justice system. As a consequence, there is a strong need and necessity to empower administrative authorities with adequate enforcement instruments, which they are critically missing. For this reason, the government has opted to enforce the administrative legislation less by criminal law and more via administrative enforcement methods.

Also, it is being recommended in various recent reports to strengthen the enforcement of the administrative legislation. The various integrity assessment commissions which audited the integrity of the public administration, the Caribbean Financial Task Force (in its evaluation of early 2013 and the semi-annual follow-up reports) and the Council for the law enforcement, they all have highlighted - generally or more specifically - the enforcement deficit in the public administration.

Given the urgency of the situation, the government has opted to give priority to regulate the administrative enforcement as a prelude to a general administrative law ordinance. Setting up such a general ordinance, in which also a chapter on administrative enforcement is projected, would just take too long and thus would not do justice to the urgent situation.

It is of great importance for the legal practice that the laws and regulations of the Caribbean parts of the Kingdom are as much as possible in concordance. The government has therefore gratefully modelled the draft ordinance in question (and its explanatory memorandum) after the enforcement chapter of an Aruban draft of a general administrative law ordinance.

## General considerations

Insufficient enforcement is detrimental to the legal certainty and legal equality and will have as a consequence that the intended goals of the legislation will not be met or, to put it another way, that the interests which the law ought to secure are not being protected. Furthermore, insufficient compliance with legislation and regulations also have implications on the compliance of other rules; government authority and the rule of law are at stake.

For a long time, criminal law played an important role in the enforcement of the laws, but the importance of administrative enforcement has significantly increased in the last few decades. From the end of the eighties of the last century it became clear within the Kingdom that the enforcement of the administrative law left much to be desired. Due to the fact that commune criminal law enforcement demanded an ever greater capacity and resources and also took more and more time, an effective criminal enforcement of the administrative law could not take place. it is now widely recognized that aforementioned enforcement deficit in today's society cannot be combatted solely by means of criminal law. This brings government to the conclusion that this enforcement deficit should be reduced by making optimized use and further developing an administrative enforcement system, despite the fact that this is expected to bring extra costs for executing better and more frequent supervision.

The consequence of this will be that in addition to the responsibility of the Minister of Justice for the criminal law enforcement and for the quality of the enforcement of legislation in general, other administrative authorities[1] – particularly other ministers - will have to take responsibility for the enforcement of their legislation: i.e. legislation, for the execution of which they can be held responsible and accountable. This is exactly the reason why the government is of the opinion that the responsibility of the administration for enforcement needs strengthening.
This draft ordinance can substantially contribute to the desired strengthening of the administrative enforcement by providing the administrative authorities with practical administrative enforcement powers and rules, which are sanctioned by the judicial authorities.

[1] For the purpose of this draft ordinance 'administrative authority' means:
a. an organ of a juristic person governed by public law, or
b. any other person or body vested, by or pursuant to law, with public authority. (See Article 1, paragraph 1, sub a)

Of course taking into account the reasoning of Article 105 of the Constitution, meaning that the enforcement powers which are attributed by this draft ordinance are for generic use and not limited to one or more specific or specialized parts of administrative law.

Administrative enforcement powers can be divided in supervisory powers and sanction powers. These are worked out in the draft ordinance in section 2 (supervision) and sections 3 and 4 (administrative sanctions).

This draft ordinance is aimed at the enforcement of administrative law, in the broad sense of promoting compliance with statutory provisions. Multiple means are being used in practice at this moment. Some of them require no codification. Providing good information about the content of regulations, for example, is in practice an important tool for ensuring compliance with these rules, but does not specifically have to be regulated in a national ordinance. Even if there is no legal basis for this, the administration is entitled to give information to the public.

Other enforcement instruments, such as the supervising powers of the administration and the investigative powers of the Public Prosecutor or the police the justice and the administrative sanction powers need a legal basis, though not always in this draft legislation. Traditionally, administrative law is enforced partly by administrative means and partly by criminal law means, but it is obvious that this draft ordinance is not the right place to regulate the criminal law enforcement. Therefore, this draft is limited to the enforcement of the administrative law with administrative means.

First to discuss is the exercising of supervision, which necessarily precedes the imposition of sanctions. Supervision activities (or inspections) are carried out under the responsibility of the minister responsible for establishing the supervised regulations and by supervisors/inspectors[2] who are specifically appointed as such by law, national decree or ministerial decree.
The purpose of supervision is in the first place that regulations are respected and complied with so that the legislation will achieve its desired effect. Supervision is therefore, in principle, more than only inspections. It is fit that inspectors in first instance focus on

[2] Article 1, paragraph 1, sub j, defines an 'inspector' as a person who is charged by or pursuant to law with monitoring compliance with the rules laid down by or pursuant to any provision of law.

providing information and training to the public (businesses or individuals) about the content of the regulations. Also that they suffice with an incentive or a warning if during the inspections a wrongful compliance of the legislation is signaled. After all, supervision is aimed at compliance and correct adherence of the law.
Only when it is has been established that this approach does not have the desired effect, an inspector can resort to having the competent administrative authority impose an administrative sanction[3] or to criminal procedure. All that does not take away from the fact that the supervision by the citizen has often been the most experienced will be at the checks on the observance of a system. A good example of this is the police officials carried out by random checks on compliance with the or under the Road Traffic Regulation established rules.

***Administrative sanctions***

Administrative sanctions are already provided for in a large number national ordinances, but often in different wording and inconsistently. The draft ordinance intends to regulate this more consistent and uniform.

Chapter 1 and section 1 of Chapter 2 contain some general provisions on administrative enforcement. These include definitions[4], formal requirements for (written) sanction decisions, the principle of legality[5] and the principle that an administrative body needs to respond timely, adequate and diligent to a request for enforcement action.[6]

*The different administrative sanctions*[7]

Of the three administrative sanctions, which are regulated in this draft, the 'administrative enforcement order' (last onder bestuursdwang) and the 'order subject to a financial penalty' (last onder dwangsom) have the character of a reparation sanction. According to Article 1, sub f, a reparation sanction means an administrative sanction intended to terminate or fully

[3] An administrative sanction means: an obligation imposed or an entitlement withheld by an administrative authority on account of a violation. (See Article 1, paragraph 1, sub d)
[4] Article 1.
[5] Article 4.
[6] Articles 6 – 9.
[7] Article 1, sub d, defines an administrative sanction as an obligation imposed by an administrative authority on account of a violation.

or partially undo a violation or the consequences thereof, or to prevent repetition of a violation. [8]

The administrative fine is a punitive sanction. According to Article 1, sub e, a 'punitive sanction' means an administrative sanction intended to inflict harm on the violator.[9]

The principles which apply to punitive sanctions, such as the principle that an administrative fine can only be imposed if the violator can be held responsible for the violation and the principle of proportionality between the violation and the sanction are codified in the title regulating the administrative fine.

*Order subject to a financial penalty (Last onder dwangsom: Articles 22 – 33)*

An order subject to a financial penalty is described as a reparation sanction in the form of a written order requiring full or partial reparation of the violation within a set time limit, and payment of a sum of money if the order is not carried out or not carried out in time. (Article 22)

Pursuant to Article 23 an administrative authority which has power to issue an administrative enforcement order may instead issue the violator with an order subject to a financial penalty. There are several reasons why an administrative authority usually prefers to impose an order subject to a financial penalty above an administrative enforcement order:

- It is in principle better to allow the violator to be responsible for undoing the infringement. This has an educational effect to prevent the same infringement from happening again. Not only to the violator but also others will learn lessons from it;
- Privacy considerations may also play a role in deciding whether the administration or the violator should take reparative actions;
- Also, with an administrative enforcement order it may be problematic in practice to recover the costs of the reparation of the violation from the violator and government (read: the taxpayers) could end up footing the bill.

An order subject to a financial penalty shall describe the infringement, reparation measures to be taken and the penalty, and shall set a time limit within which the violator can carry out the order without paying a penalty. *(Article 26)*

[8] Article 1, sub h, defines a violation as an act violating a rule laid down by or pursuant to law.
[9] 'Violator' is defined in Article 1, sub i, as the person committing a violation or participating in its commission.

The administrative authority shall determine the penalty either as a lump sum, or as a sum payable per unit of time in which the order has not been complied with or for each violation of the order.

It shall also determine a maximum amount above which no further penalties will be forfeited. The amounts shall be reasonably proportionate to the gravity of the interest violated and to the intended effect of the penalty. *(Article 25)*

The aim is to restore the situation as it was before the infringement took place, and to hold the violator himself responsible. If the violator contests the penalty sum the judge will decide on the reasonableness or (dis)proportionality of the penalty. The monies will flow in the public coffers and the Receiver may recover the penalties (and statutory interest) by a compulsory payment order, including the related costs. *(Articles 30 and 31)*

*Administrative enforcement order (Last onder bestuursdwang: Articles 34 – 45)*
An administrative enforcement order is also a reparation sanction. This sanction will in principle be given in the form of a written order, requiring full or partial reparation of the violation, and empowering the administrative authority to carry out the order itself if it is not carried out or not carried out in time. *(Article 34)*

An administrative authority may require that the violator has to do, undo or refrain from a certain activity. An order may also be addressed to the person who actually is in a position to execute it if the violator himself is not.

An administrative enforcement order shall:

- state the violation;
- describe the reparation measures to be taken;
- state the time limit within which the order must be carried out;
- state to what extent the administrative enforcement costs will be charged to the violator;
- be notified to the violator, the persons entitled to the use of the property to which the order relates, and the applicant. *(Article 36)*

Administrative enforcement action is taken at the expense of the violator, unless he cannot reasonably be required to have to bear the costs or to bear all of the costs. *(Article 38)*

*Administrative penalty (Bestuurlijke boete: Articles 46 - 58)*
In addition to supervision and reparation sanctions, there is also the punitive sanction 'administrative fine' as one of the administrative enforcement instruments. The characteristic and purpose of this sanction is to "punish" the violator.

The administrative fine is seen as an alternative to the imposition of criminal prosecution and the subsequent conviction. The main reason this instrument has a place in this draft ordinance is the current overload of the investigative and prosecuting apparatus in St. Maarten.

A criminal sanction and an administrative fine cannot in principle be imposed at the same time. Criminal law should be considered as a big stick, when for whatever reason the administrative path does not solve the problem. It is the opinion of the government that administrative enforcement should have priority, but the criminal law remains necessary as an ultimum remedium: as a last resort for serious crimes, when special investigation methods are required or if the administrative authorities - for whatever reason – are neglecting their enforcement duties. If criminal prosecution would be categorically excluded government would be left empty-handed. The criminal law should therefore be reserved for the really serious cases.

In general, it can be said that a punitive sanction an ultimum remedium is in applying administrative sanctions. The main priority of an administrative authority in its response to a violation or infringement, which is sanctioned with administrative sanctions, is undoing that infringement.

The majority of violations which cannot be undone are currently only enforced by criminal law and this will remain so for a big part; inter alia violations of the Penal Code and the Road Traffic Regulation. But the other part of violations will be faster - and therefore more efficient - tackled through the imposition of an administrative penalty. Before setting up the respective National Decrees which will declare this draft ordinance applicable to other legislation, it should always be examined if there is reason to substitute or complement criminal enforcement with administrative enforcement, more specifically by introducing the administrative fine in cases of "fait accompli".

*Entry into force*

Finally, the proposed scheme of the entry into force of this draft ordinance, as is stipulated in Article 58, will be explained.

It is proposed that this draft should not immediately take effect for all administrative authorities of St. Maarten. It is intended to let the draft ordinance come into effect by means of a national decree, on a per ministry or administrative authority basis and its specific legislation. Such a national decree should also streamline the respective legislation of the administrative authority involved with this drafts: i.a. by inserting legal provisions which empower the administrative authority with the powers referred to in this draft ordinance. Before setting up such a coming-into-force national decree i.a. the following should be examined:

- Does the legislation lend itself to administrative enforcement;
- Does the legislation already contain (more or less) similar administrative enforcement rules and provisions which should be deleted or amended, in order to bring the legislation more in conformity with the draft ordinance;
- Is the administrative authority ready to implement and execute the new enforcement powers: does it have enough capacity, sufficiently trained inspectors, standardized documents et cetera;
- Is there any (written) policy on how the (new) enforcement powers will be executed and applied and for establishing the administrative fine rates (enforcement policy and sanction policy)?

*Financial section.*

This draft ordinance in itself has no financial consequences. If aforementioned coming-into-force national decrees have financial consequences, it should be mentioned in the explanatory memorandum of these decrees as per Article 10 of the Accounting Regulation. The financial consequences may include costs of training, the development of enforcement policy, automation, creating form formats etc.

# Continuation of the Administrative Enforcement Ordinance Draft Q&A

The Honorable Minister Of Justice, Rafael A. Boasman

**MINISTRY OF JUSTICE**

Augustus, 2017

The Cabinet of the Minister of Justice and the Department of Judicial Affairs

## General Questions posed by the Members of Parliament 4 April 2017

*1. Will all civil servants get more competences and powers?*

No, some administrative bodies will, but most will not.

Administrative bodies, which already have administrative competences, will not get more power. Those are for instance:

- the Central Bank supervising the financial system,
- Customs supervising import and export,
- Inspector-General for public health supervising the quality of drinking water, food, restaurants, medical care, and so on
- Maritime Inspector supervising the adherence to maritime law,
- Aviation Inspector supervising the adherence to aviation law,
- Financial Intelligence Unit supervising unusual transactions and adherence to international sanctions.

The administrative bodies that have insufficient means to supervise the adherence to the laws *may* get more competences and powers. However, this would only be after proving that they are able and well equipped to fulfill the new competences, as they should.

Those are for instance:

- The Labor Inspectorate supervising the adherence to laws pertaining to social obligations, safety regulations in hotels, obligations to get a permit for workers from abroad and so on
- Inspectorate Ministry TEATT, supervising economic laws

This will be achieved in conjunction with the national decree that regulates the applicability of the draft law to the specific administrative body.

Finally, yet importantly, it will also be possible to empower an administrative body by law. I.e. A Timeshare Authority will be established in the case of the initiative draft law of the Honorable Member of Parliament Mrs. Wescot-Williams, once approved by Parliament. See article 3, subsection 4: "The Timeshare Authority shall have the power to impose a cease and restore order or an administrative fine. The National Ordinance administrative enforcement shall apply to the Authority." In a case like this, no more

legislation would be necessary because the draft law contains all of the necessary content about those powers. A real simplification in our legislation.

This will be the way to empower new administrative authorities, because any future "bodies" will be able to prove that they are able and competent to fulfill the new "possibilities" and responsibilities properly. This has to be secured by the legislator.

*2. Which checks and balances will exist to minimize any risk of abuse of powers?*

Civil servants are human beings, and as all human beings, they may be mistaken. In order to achieve a proper ruling by the civil service there are many checks and balances already in place. The Inspectors in the civil service always work in a team; their colleagues may scrutinize them, and advise each other. A department head always supervises civil servants and a director or the Secretary-General will always supervise the department head.

The Secretary-General is the highest civil servant within the Ministry, supervising the proper functioning of his or her Ministry. The Secretary-General also has the authority to impose sanctions on civil servants who have made mistakes or did not fulfill their function properly. There is a Code of Conduct for all civil servants, working within Government, and there may be specific codes respective to the specific departments or inspectorates.

The Secretary-General answers to the Minister, and in the end, the Minister is supervised by Parliament.

In addition to this, there is also protection for the judiciary laid down in the draft law. Before any administrative measure can be imposed, there has to be a written report by the Inspector, explaining what the offence is, the article of the law that has been violated and which facts have been detected during the supervision. See article 4, subsection 2, of the draft law.

The interested party will receive this report, and will have the opportunity to appeal to the authority. See article 9, subsection 1, article 21 and article 46, subsection 1.

In the case that the administrative authority intends to impose any reparative order or a punitive sanction, this intention has to be sent to the offender and translated into English if the offender prefers a translation. See articles 21 and 46.

An Inspector will only use the powers granted to him/her if it is deemed reasonably necessary for carrying out his/her duties. See article 10. Violating this stipulation by abusing this power, will be an infringement of the duties of a civil servant, and may be punished internally by a disciplinary sanction. See chapter VIII of the National ordinance substantive civil servants law (LMA).

In most cases, one can appeal the decision of an administrative authority by filing an objection to the judge. See the Landsverordening administratieve rechtspraak (LAR). The judge will ask the appeal committee of the Ministry to handle the case first. The committee will then study the objections raised, and will hear both the offender and the representative of the administrative body. The committee will then send their deliberations and advice to the Minister who has to decide upon the appeals.

If the offender is not satisfied by the review of the Minister, he may file an appeal to the Court of First Instance. Following the decision of the judge, there is the possibility to address the Common Court of Justice.

Subsequently, my conclusion is that there is no ground for any fear of abuse by a civil servant.

**Specific questions, posed by Members of Parliament**

**MP Leonard**

*1. Will the Minister translate the draft into English?*

Referring to the proposal of Madam Chair, a summary in English has been provided.

*2.*
*a. In which case will an order be subjected to a financial penalty, an administrative enforcement order,*
*or an administrative fine be imposed?*
*b. Who determines that the actual violation warrant the respective penalties?*
*b. In which case will a business be closed?*
*c. What will happen in the case that a business is wrongfully closed?*
*d. In what case will an Inspector only issue a warning without further sanctions?*

From those three sanctions, the order subject to a financial penalty and the administrative enforcement order, have the characteristics of reparatory sanctions. A reparatory sanction aims to end or undo the violation.
An administrative fine aims to punish the offender, in the case that it is no longer possible to repair the violation.

i.e.: a driver who has exceeded the maximum speed limit cannot undo his violation. A driver who has parked his car at the wrong place, may undo this by moving his car at the moment the Inspector asks him to do so. In such a case, the Inspector will only issue a warning without further sanctions. However, in a case where the driver is not in a neighborhood, the Inspector has no other option than to impose a fine.

The regulations of the administrative body that outlines the use of its new competences and powers will be included in a policy document. This document has to be made public, so that everybody may be informed in advance of the repercussions associated with a violation of the law, which the administrative authority has to supervise.

This document will communicate the violations that would warrant that a business be closed. This will be the case when a business is operating without the necessary permits. I.e. a business that is operating and is already serving many customers and there is no intention to obtain the proper permits because the company is unable to meet the necessary requirements. This could have been the case with a money transfer agency operating without a permit. The Central Bank preferred in this recent case to issue a public warning, instead of closing the office. Customer protection in this case was attempted by issuing a public warning that the agency is working without the necessary permits.

In this particular case, the judge decided that the Central Bank should have taken into account that a permit might have been possible for the agency to secure, as soon as the draft law now tabled in the Parliament becomes law. See the draft Landsverordening toezicht geldtransactiekantoren. Hopefully, the draft law pertaining to the supervision of money transfer agencies will soon be establishing the necessary legal framework.

As another example, a restaurant may be temporarily closed after a complaint is received by customers who have become sick after eating at the restaurant, and an investigation results in finding rats and cockroaches in the dirty kitchen of the said restaurant. In such a case, the restaurant will be closed to the public until the whole kitchen has been thoroughly sanitized/cleaned and the restaurant owner has proven that he/she has taken all of the necessary measures to avoid this situation from reoccurring. In this case, it would be an exaggeration to close the restaurant indefinitely, but it would not be sufficient to issue a warning to the owner of the restaurant, where people have become ill.

One must keep in mind that the Inspector will start with an explanation and a warning in a less serious case.

For example, it will probably be sufficient to urge the owner of a wreck parked on the street to remove the wreck as soon as possible. After a period of time when the Inspector

returns and finds the situation to be the same, he may issue an order subject to a financial penalty to remove the wreck within a month.
If this then proves to be futile, the Inspector will issue an administrative enforcement order. In this case, the administrative body will take care of the removal of the wreck at the expense of the owner. In a case like this, an administrative fine would be useless, because the wreck would remain on the street.

The purpose of the draft law is not to collect monies for Government's coffers, but to urge the public to adhere to the law.

*Will there be a competition amongst Inspectors to see who has collected the most administrative fines?*

I can hardly believe such a competition would arise; however, I would approve of such a competition to see who has handled the most cases of preventing or restoring a violation of our laws.

***MP Brownbill***

*How lengthy has the legislation process be so far, and how long will it take to be completed?*

The legislation process started more than three years ago. The first draft law was completed mid-2014. That draft was only meant for the Inspectors and inspectors at the Ministry of Tourism, Economic affairs, Transport and Telecommunication (TEATT). In December 2014, Minister Dennis Richardson decided that this draft law had to be transformed into a draft that would be applicable to all ministries and inspectorates. That draft was approved by the Council of Ministers in June 2015. The advice of the Council of Advice was dated November 17 2015. The reaction of Government to this advice ("nader rapport") was completed in May 2016. The Parliament then received the draft on August 5 2016.

The draft law will be enforced at different dates for different administrative bodies for different laws. Subsequently, it is quite difficult to predict when this will be completed. It all depends on the implementation plans of the ministries of the already existing administrative bodies. Some bodies will be eager to obtain better supervising powers while others will take their time to prepare themselves carefully.

Administrative authorities, who have already obtained administrative empowerment, will not be in a hurry. I presume for instance that the Central Bank will await the already ongoing legislative process, as the draft law for actualization and collaboration of the laws pertaining the supervision of the financial markets has recently been submitted to the Parliament.

For new administrative bodies, the processing timeframe of them becoming a legal entity will depend on the date of the enforcement of the relevant draft law. I refer for instance to the draft initiative law of the Honorable MP Mrs. Wescot-Williams aiming to establish the new Timeshare Authority.

*a. What effect on economy will this draft law have?*

The main purpose of the draft is to promote the adherence to the laws in this country by citizens end companies. The main effect on the economy will be better consumer protection and less companies profiting from the non-adherence of the laws.

For example: a taxi driver may now profit, charging a higher fee from his customers, without any fear the Prosecutor or the criminal judge fining him after a complaint that he has broken the legal rules about the maximum fee to be charged for a specific destination.
Companies may now profit by not filing and paying their due taxes and premiums incorrectly, thus creating an opportunity to lower the prices of their goods, which will give them a definite competitive advantage over their competitors who does not adhere to the law.

In the end, this draft will definitely result in a level playing field.

*Does the Chamber of Commerce have to publish its policy document to prevent violation or non-adherence to the Handelsregisterverordening by business owners?*

Yes. In the case that the draft law will become applicable to the Chamber of Commerce, it will have to decide upon a policy document and publish it, aiming to improve the adherence of that law.

I refer to my answer to questions by the Honorable MP Connor below.

**MP Connor**

*Will the draft law also be applicable to the Bureau voor Telecommunicatie en Post (BTP), the Chamber of Commerce ("Kamer van Koophandel") and other quasi-government like businesses?*

Yes, that might be the case.

Article 1, subsection 1, of the draft law states that the law might be applicable to any administrative body ("bestuursorgaan"). Such a body is defined as "an entity established by public law".

In the law concerning BTP, it is stated that the Bureau is a public legal entity ("openbare rechtspersoon"). See article 2, subsection 2. Although in Dutch, an "openbare rechtspersoon" might not be the same as an independent administrative body ("zelfstandig bestuursorgaan"/ZBO). There is no doubt that BTP is an independent administrative body (ZBO).

The BTP already has some administrative powers. See Chapter VIII of the Landsverordening op de telecommunicatievoorzieningen. However, this chapter is rather short and outdated. In the case that the Ministry of TEATT decides in its implementation plan that BTP will gain the competences and power as regulated in this draft law, that specific chapter will be deleted from the Landsverordening op de telecommunicatievoorzieningen by the Landsbesluit, which will stipulate the enforcement for BTP for that National Ordinance.

The Landsverordening op de Kamer van Koophandel en Nijverheid does not contain an article, that labels the Chamber of Commerce as an independent administrative body. However, article 1, subsection 2, of the Landsverordening op de Kamer van Koophandel en Nijverheid states: "In Sint Maarten wordt een Kamer ingesteld, die in Philipsburg haar zetel heeft en uit negen leden bestaat." Translated into English, this article states that there *is* a Chamber, established in Philipsburg, which consists of nine members.

My conclusion is that the Chamber of Commerce is an entity established by public law, and so the draft law may become applicable to the Chamber.

The Chamber is tasked with the implementation of the Handelsregisterverordening. The only way to enforce diligent adherence of that law is now under the jurisdiction of the Prosecutor and the criminal judge. The Prosecutor and the criminal judge are too busy dealing with more severe infringements than to address people who fail to register their changes diligently. This has resulted in the handelsregister to be inaccurate. It might be a good idea to give the Chamber administrative competences and jurisdiction to supervise and enforce the correct filing of data in the register. Again, it is up to the Minister of TEATT to decide in the implementation plan of her Ministry if, how and when this may happen.

*Will the Minister contact the Chamber in order to modernize the Handelsregisterverordening so this law will become more effective?*

This is another issue that does not fall within the scope of this draft law. However, I presume that this will be done. Government will soon submit a draft law to the Parliament, aiming to review Book 2 of the Civil Code. The most important goal is to

put an end to the existence of any bearer shares and bearer certificates, as urged for by the Organization for Economic Development, the Financial Action Task Force and other financial institutions and countries.

One of the new articles will grant the Chamber the power to change data in the register independently, when the data is no longer correct. i.e. in the case that a company has ceased to exist.

*a. Is there any legal provision, stating the maximum timeframe within which an administrative body has to decide upon a request by a citizen?*
*b. What is the consequence if this timeframe expires without action?*

There are only few articles in laws determining such a timeframe. However, the administrative judge will decide what should be a reasonable period that an administrative authority has to make a decision. It will also depend upon the importance of the decision.

This jurisprudence has been elucidated by appeals against Government failing to make any decisions.

In this draft law, the maximum timeframe for an administrative authority to make a decision is quite often defined. See for instance article 6: in the case that anybody asked the administrative authority to supervise a violation of the law, the authority has to decide within six weeks and send its decision to the person who filed for the adherence to the law by the offender.

**MP Geerlings**

*Is the Arbeidsinspectie already fully equipped for its new administrative powers?*

The 'Arbeidsinspectie' is eager to claim the new competences and jurisdiction as outlined in the draft law, as it is eager to improve its supervision and reach a better adherence to the laws it has to supervise. It will soon be decided in the implementation plan of the Minister of VSA as to whether or not they are fully equipped.

*Would it be better to have a more centralized body of control since the infringements of a particular case may fall under different ministries?*

That might be a good idea for the future. This could also be part of the implementation plan of the Ministry of VSA. I suppose that the Minister will start with a better

empowerment of the 'Arbeidsinspectie', and review a merger with the Inspectorate for Public Health at a later date. Let us wait for the implementation plan from the Minister.

*Will the draft law be correctly executed from the very start?*

As mentioned earlier, every existing administrative body will have to prepare itself properly, before the Landsbesluit is signed for the draft law that is applicable to that specific administrative body. This will contain a policy document that will outline the way it will execute its new powers, while ensuring sufficient budget, amount of personnel, education/ training of the personnel and preparation of all necessary documents and so on.

Administrative bodies may learn from other administrative bodies who have been executing these competences, so that they won't have to invent everything from scratch.

**MP R. Pantophlet**

*What is the meaning of the following terminology?*

i. *"as far as possible": ("voor zover mogelijk" in article 16, subsection 4)*
ii. *reasonably beleives ("naar zijn redelijk oordeel" in article 17, subsection 2)*
iii. *reasonable period of time ("door hem gestelde redelijke termijn" in article 18, subsection 1)*
iv. *cooperation which the Inspector reasonably can claim ("medewerking die hij redelijkerwijs kan vorderen" in article 18, subsection 1).*

All those phrases have not always had the same meaning, nor will they have in the future. It will depend upon the facts and the situation. The purpose of these words is to prevent abuse of power. The Inspector will have to explain why he acted as he did in a specific case; and his actions have to be reasonable and proportionate.

Sometimes food, which has been taken away for a survey in a laboratory, cannot be used in a proper way as food anymore; in a case like this, it would be useless to return the remaining food to its owner.

In a case where a Inspector claims to peruse the paper work of a taxi driver to investigate the complaint of a customer who had to pay a fee that was not in accordance with the law, the taxi driver will have to disclose his paper work about that specific trip, but not all of his records. If there is a second or third complaint about the same taxi driver, the Inspector may peruse all of his records in order to make a decision. This decision would result in an issued warning (if the taxi driver is a first offender) or an issued

administrative order to prevent further violations (if the taxi driver has committed the same offence more often).

In general, daily practice will clarify the exact meaning of these words. Lastly, the administrative judge can decide upon the exact meaning of the respective phrase, if the offender asks him to do so according to the LAR.

**MP G. Pantophlet**

*How are the already existing laws that contain administrative sanctions, presently executed?*

It is difficult to answer this question because there are already numerous existing laws about administrative sanctions. As far as I know, there are only a handful of complaints about the execution of these laws in the past:

- There has been one complaint about the temporary closing of a restaurant by the Inspectorate for Public Health.
- There has been an appeal from a money transfer company against the public warning that was issued by the Central Bank, that this particular money transfer agency does not have its necessary permits.
- There has been an appeal of a doctor who was forbidden to treat patients.

We are all aware of these cases as they were publicized. I am not aware of any complaints that were not publicized.

My conclusion is that the existing laws are being properly executed.

*Is the procedure to get a restaurant permit too complicated?*

I am not in a position to comment on that, as it is an issue to be dealt with by the Minister of TEATT.

*How about the situation in Aruba and Curaçao?*

In Aruba, the Government intends to submit the draft law to the Parliament soon. That draft will presumably be more extensive than the draft in Sint Maarten. The draft in Aruba will, as far as I know also contain several general obligations about the good behavior of Governmental bodies regarding the citizens and companies in Aruba.

I am not aware of any similar draft law for Curaçao at present.

*Are there any plans to establish a small claims court by Government?*

To be frank, not yet. One must take into account there are nowadays two drafts aiming to improve the consumer's protection.

The first one is the initiative draft National Ordinance of the Honorable MP Wescot-Williams, that aims to establish the Timeshare Authority. This Authority may play an important role for the protection of both consumers and sellers of timeshare rights.

Secondly, the Minister of TEATT has published a draft law to improve and secure consumers protection ("Landsverordening consumentenbescherming"); see

http://www.sintmaartengov.org/government/TEATT/Department%20of%20Economy,%20Transportation%20and%20Telecommunication/Documents/Ontwerp%20landsverordening%20consumentenbescherming%20EVT06052016.pdf).

I prefer to await the further proceedings of those two drafts before taking a small claims court into deliberation.

*How is it possible that one will obtain a permit to build a house, while the permit to build the similar house by someone else can be rejected?*

I presume the most reasonable explanation is that the first one is in coherence with the spatial planning in force, and the other is not. Another explanation may be that, there were no objections by others in the first case, while in the second case there were severe objections by neighbors. Without knowing the details of a particular case, it is hard to answer this question. This draft law aims to improve the adherence to the law, by both the one who got the permit and the one who did not.

**MP Irion**

*Will the Inspectors be required to receive specific training as special investigation officers ("bavpol")?*

Generally speaking, no. As mentioned before, the aim of the draft law is mainly to prevent or restore violations of the law. To be a good Inspector, it is not necessary to be trained as a bavpol. That would only be the case if it concerns an administrative fine, of which such a fine is the last resort.

There will be some Inspectors who will have to be trained and nominated as bavpols. For example, the Inspectors who control traffic. Some offences may be dealt with by issuing

an administrative fine, such as parking or speeding up to 10 km/h over the legal limit. However, sometimes the violation will be too severe to be dealt with by an administrative fine, such as speeding over 50 km/h the legal limit. In such a case, prosecution and a verdict of the criminal court will be more appropriate. This has to be outlined in the policy document of the traffic police, *if* it is decided that traffic offences may be dealt with under the draft law in the implementation plan.

**MP Wescot-Williams**

*Will the Minister send a summary of the draft law in English to the Parliament?*

It has been my pleasure to do so.