



Parliament of Sint Maarten

Staten van Sint Maarten

Parliamentary Year 2018-2019-125

National Ordinance containing rules to prevent and combat money laundering and terrorism financing in response to the recommendations of the Financial Action Task Force (National Ordinance combatting money laundering and terrorism financing)

**Report
No. 5**

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance containing rules to prevent and combat money laundering and terrorism financing in response to the recommendations of the Financial Action Task Force (National Ordinance combatting money laundering and terrorism financing).

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 to know the following. At the time of the signing on by Sint Maarten, were there recommendations that were already met? Currently there are, especially at financial institutions and other institutions as well, already checks taking place. Those checks are on the basis of what? On the basis of what are current checks being performed? Is the current law giving that possibility? Is it internally? Does it have to do with correspondent banks? Can that overview be given? Is it something from the Central Bank? Can we have a complete overview of all of the recommendations and where are these recommendations regulated in our laws, per

recommendation? When these recommendations are adjusted, how quick should countries comply with having to change their regulations? Can an overview be given of that particular process?

The slides 13 and 14 speaks to a clarification given by the FATF having to do with the sharing of information between branches of institutions. The faction would like a further explanation on that amendment having to do with sharing of information between units of organizations or institutions? Slide 15 speaks to the matter of privacy protection and this was an amendment by the FATF. The faction would like a further elaboration on this amendment. The faction would also like an explanation on slide number 16 as it says the National Ordinance identification when rendering financial services and the National Ordinance reporting unusual transactions mainly saw services provided by financial institutions upon entry into force. The scope of anti-money laundering legislation was thereafter extended to include money remitters etc. etc. Was that our national scope? Or was this the international that thereafter was amended to include? The scope is of which legislation, our legislation in existence until now or was it international and we are now catching up ?

What makes the compliance with the draft law on the table so detrimental? In terms of complying with for example, having a law on money laundering, we comply with that currently. Do we or do we not? Why is the bringing together of existing laws, why is it so important right now? It is not as if we do not have money laundering laws in place, it is not as if we do not have our financial intelligence unit in place. This law goes further to propose, because of the urgency we basically skip the part of vetting by the Ombudsman in this case. Skipping that step is a very very crucial step in the process of the checks and balances as far as legislation is concerned. Does the fact that we have certain laws already the reason for skipping the vetting by the Ombudsman?

It was decided that by 2022 all recommendations of the FATF should be implemented. Was that project a tangible project? Can that project be shared with Parliament? What deficiencies are in the current law that will be helped by this draft law and the draft law on the MOT?

Has the Minister and or the government at any point in the general discussion considered getting the input from our

Social Economic Council? This considering mention has been made about the effects on our economy, the effects on our social lives and livelihood.

It is wrong to automatically assume that because you are in these businesses that were outlined in the presentation, casinos lotteries, that it is criminal. We are seeing this more and more by the banks, especially the banks that have international affiliations. These very organizations, gaming, decriminalization of prostitution, casinos are all legal within our realm. How is it possible that government on one hand can give licenses to operate within their jurisdiction, and on the other hand banks, which receive the same license to operate from government, then basically says no I do not want to deal with your so call kind? That is a dangerous precedent being set. Those companies in turn pay taxes to government, which the same banks accept those monies through government. The rules must be clear. What does compliance do for Sint Maarten and its industry? What is done in the Netherlands? Are the banks refusing funding from the Red Light district? For years marijuana has been decriminalized, as a matter of fact legalized, in the Netherlands, what happens with the monies that will be generated or is being generated by the marijuana industry. The faction understands that that is one of the problems that they are facing as well. Banks are not accepting the monies. If these lotteries, casinos, houses of ill repute decide to keep their monies at home in cash, that too is an offense. People and businesses are being put in a corner where it is impossible to do business. Is government prepared to say since Casinos cannot bank at banks, is government going to close all casinos? What will the repercussions be of that? What does the cruise ships do with their money after they receive it from their clients?

One of the types of businesses mentioned were stocks. People who are involved in stocks and even foreign exchange, if it is listed as one of the companies collecting this money here would be flagged as money laundering, how would people continue to do business without having to worry about being considered one of those involved in money laundering? As far as collecting the funds from these types of businesses, activities happening abroad and collected here, is this considered money laundering? With the amount of jobs not available and banks not doing business anymore with people

who have certain businesses. How do those people make money without being accused of money laundering? Collecting funds from AirBnB, is this considered money laundering? Businesses such as SZV that invest in stocks, where do they put their money when they collect their earnings from this? Do you have any suggestion where these people should store their money when the banks are not taking it anymore? The monies collected from PayPal, is that money laundering? Where are the boundaries and at what point do you find yourself crossing into money laundering? The prepaid credit cards that are completely virtual, there are no laws for them, is this crossing into money laundering as well?

Can Parliament receive a complete overview of the treaties that involve this particular subject to which Sint Maarten is party?

What is the English translation of *gedogenbeleid* and when is it applied in Holland in the marijuana industry?

The **National Alliance-faction** has taken note of the draft. The faction would like to know what the role is of the Central Bank and do they also report fraudulent activities to the MOT? If so, how many unusual transactions have been reported for 2016, 2017 and 2018? How does the Central Bank deal with the handling of complaints? The faction indicates that on the website of the Central Bank it states that the Central Bank considers it important to receive complaints, tips and signals from the public regarding supervised institutions, however the Central Bank cannot mediate on your behalf or determine whether your complaint is well founded. Any report or complaint will be taken seriously and properly reviewed. It goes on to state that the Central Bank cannot provide a direct personal solution for your situation. Since the Central Bank is bound by confidentiality, the Central Bank cannot give feedback or signals on complaints that are filed. So, you can make a complaint, but the Central Bank is not obliged to answer. The faction would like some more clarity on that. What laws are binding the Central Bank or preventing them from giving feedback on these things?

Is there some sort of grace period or understanding for companies who have been doing business for years, and now with new legislation and policies coming in, all of a sudden

they can't be doing business with banks no longer? What do they do now? What is their recourse? Where do they turn to? How do they settle this? What is the assistance that they get? If you are talking about 13 billion dollars the MOT reports, then the question is, in that reporting does this money come from the gambling sector, which is the casinos? Does this money come from the insurance sector? Does this money come from the gaming sector? Where is this money that is being reported, that 13 billion coming from? Are these institutions part of that 13 billion that is being reported by the MOT?

That stream of money that the MOT reports, where is it coming from? How do we classify the difference between the gambling money on one account for the business and the gambling money on another account for government? The faction would like an explanation on this. Is job loss being taken into account with adopting these legislations?

How is this going to affect PayPal? How is it going to affect AirBnB, in what way? How will it affect our economy? How is this going to help these type of businesses? What is it going to do for Sint Maarten cash business?

Banking in general will become a lot more difficult in the future. We are way behind. The faction would like to see more innovative laws coming to Parliament. The faction would also like to know if the Minister was a Member of Parliament, if he would be comfortable enough with the law at the moment approving this law?

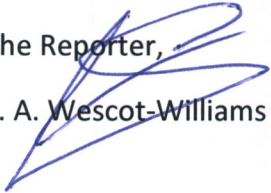
If someone has stocks and get pay dividends and they pay their 50% tax on their dividends in the USA and they payout on their local account. Between the MOT and the Central Bank, will they also now be reporting on my capital gains to the finance ministry to the tax department? Or is there a line drawn between there?

This report is to be considered the Final Report.

Stipulated in the meeting of the Central Committee of
February 27th, 2019.

The Reporter,

S. A. Wescot-Williams

A handwritten signature in blue ink, appearing to be 'S. A. Wescot-Williams', written over the printed name.