



Parliament of Sint Maarten

Staten van Sint Maarten

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National ordinance amending the Penal Code in connection with the implementation of some urgent international obligations

**Report
No. 5**

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance amending the Penal Code in connection with the implementation of some urgent international obligations.

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 if the Government can indicate whether the amendments of this law are purely to be in line with international laws or if the passing of this law will have an immediate positive impact on Sint Maarten. And if there will be some immediate positive effects for Sint Maarten, can examples of them be given? The faction would like to know if the MOT or the Ministry does any due diligence of these laws or is it just a matter of being in line with the international standards? Would the Government be able to give an example of some investigative checks and balances as to how this will have some type of positive impact on the people or the businesses of Sint Maarten?

As it relates to the terrorist financial transactions, can the MOT report of any findings in the past through any of our banking systems where there was records of terrorist financial transactions? Would Government be able to answers and say

yes there were some and that's why we have to be in line with the law and we are affected by this?

If this law is not approved, what are the itemized consequences for individuals as well as businesses on Sint Maarten? What will happen? Can examples be given of things that will hamper us as a country or as a people or even as businesses?

In our effort to satisfy the regional and international community that we are a part of, can Government point out what historic terrorist practices are experienced on Sint Maarten? Is it a right that these banks can be asking for this detailed information already? Could the passing of the laws make it more difficult for local and foreign investors to want to invest?

The faction mentions that this draft went to the Council of Advice three times. The faction further mentions that in the provided overview of all of the necessary changes regarding the anti-money laundering and the anti-terrorism financing. Mention was made very specifically that where the Criminal Code is concerned there are 5 recommendations by the CFATF that needed to be made or to be amended in the Criminal Code. These are recommendations 3, 5, 6, 7, and 36. This proposal was with the Council of Advice for a period of 8 months. The matter of concordance of legislation is insufficiently reacted to by the Government.

Is Government aware of the newsletter of the ALMC of the Netherlands? In their newsletter of June, they report on Sint Maarten and mentioned that for now Sint Maarten will not come on the blacklist. The list is made by the FATF and not the CFATF. The faction has an issue with how easy the Government puts the advice of the Council of Advice aside. The faction is not convinced that in order for the necessary changes for compliance that all of this should have been thrown in the mix.

The faction is extremely concerned that when fundamental matters are raised by the Council of Advice, where they say has Government given this matter sufficient constitutional review, and the Government admits it didn't

have the resources and the time to look at them, then the faction believes that they shouldn't be included in these particular laws.

Are we looking at concordantie or are we not looking at concordantie? The faction would like Government to confirm if there was a project group that was charged with making and proposing the law. The faction is of the opinion that we should focus on the recommendations. The matter of the review, of especially of our Criminal Procedure Code, let us have that discussion. Let us look at the new elements that have been introduced, because apparently, they are being carried out, but they don't have a legal basis. Then we can have that discussion separate from the CFATF recommendations.

The faction would like the opinion of Government on moving this matter forward. The faction understands the urgency, but thinks that Government has unduly put this matter on a longer trajectory because of what Parliament has in front of it. The faction would like Government to really take into account what the Council of Advice has recommended and the faction is not satisfied with the response to the advice by the Council of Advice. The faction is of the opinion that we should keep these matters separated.

The faction mentions that it referred to article 154, the 7th part. The Government is saying we should see the Dutch Criminal Code, article 23. That is one of the things the faction referred to in terms of referring Parliament to see the Dutch Criminal Code to find the elucidation. Article 195a the new one, Government is saying they don't have to explain the comparison. The Council of Advice asked the Government regarding 1:202 and the Government mentioned "met terroristisch oogmerk" and the Council of Advice asked if you don't think that is a conflict with the lex certa, in other words that persons should know what is a punishable act and not based on suspicion. Article 254, in terms of the increase of punishment. There is an increase of the punishment from 8 to 15 years. The Government has been asked to explain and motivate this. The Government suggested that this is not about concordance but Sint Maarten is kind of running ahead. The faction further mentions that there are some articles on

the basis of the US report of trafficking in persons. The matter of a life sentence has been raised, and the faction asks Government for its attention on this. We have some other comparison in which you follow the Dutch law, and then in the same instances where you then deviate from the Dutch law. There is an increase in terms of time from 2 to 4 years and the Government basically says there that they cannot give an advice or motivation. The Government is also asking the Parliament to forego the vetting by the Ombudsman to the constitutional court.

The National Alliance-faction has taken note of the draft with great interest. The faction questions why the law should be approved. Why should this law be approved? The faction is not convinced that this law should be approved.

The faction mentions issues pertaining to terrorism and the transaction of money through different entities and funding terrorism. When we look at countries being part of the CFATF. The faction would like to know if Trinidad is part of this organization and if they are how are they still part especially around the issue of terrorism? For this reason, the faction is not convinced that Sint Maarten will be blacklisted. What is the opinion of Government that Sint Maarten not approving this will be on the blacklist but Trinidad is not on the blacklist and they have proven individuals that have supported terrorism, whether its means of money laundering or individuals leaving the country? Have any Sint Maarteners left this country to help fund terrorism in any form, whether its money laundering or supporting anyone of the top 5 terrorist groups in the world?

Has the MOT ever recorded or seen any illegal terrorist money transactions from Sint Maarten to any of these top 5 terrorist groups in the world? Is there any semblance of terrorist funding within the 13 billion unusual transactions mentioned? How can we be on the blacklist if we have a difference of opinion with these laws? What are the consequences for Sint Maarten of being on the blacklist? What will happen if Sint Maarten doesn't approve for the time being?

The faction would like to know if with the passage of this law increase the due diligence of the banking sector? Are banks already trying to be compliant with international laws and regulations? Isn't Sint Maarten's financial and social economic system already severely challenged or negatively impacted by our compliance thus far? The faction would like to know what the financial consequences are if Sint Maarten does not approve this draft?

What classification or group of business, entities, legal persons, individuals are currently fitting the bill as suspicious in terms of money laundering and funding of terrorism? Does Sint Maarten have any known links with terrorism? Has there been any report coming out of Sint Maarten within the last 10 years that any proven money laundering can be linked?

The faction questions what money laundering is. What does it entail? And to combat terrorism, what does that entail? What has Trinidad and Tobago done to combat terrorism financing because the faction has not seen any public statement to that country? Has there been any indication in Sint Maarten that we are sponsoring terrorism in any form or fashion? The faction is of the opinion that the laws and the organization is biased towards small islands. It can't be that a country with 1.3 million people in comparison to another country with 60 to 70 thousand people should be held with the same standards when it comes to combatting terrorism financing and they have been the one supporting terrorism. The faction would like to know the source, the stem, where has it come from. What steps have they taken to prevent that from happening?

Out of the amount of unusual transactions taking place that the MOT made mention that is happening in Sint Maarten, how many have been prosecuted by the prosecutor's office? What has been done by the prosecutor's office with the billions that have been recorded or overlooked or mentioned by the MOT? What they are doing is giving the banks more power and that is damaging our economy. The faction is not saying that we don't want to be in compliance. We are not saying that we shouldn't be complying. What we

are saying is that given the presentation of these laws, it is not good for Sint Maarten.

Why would we give the authority to the Chamber of Commerce to deregister businesses? How many of the unusual transactions are being handled by the prosecutor's office right now? Has Government called the FATF and asked them any questions as to how Trinidad is dealing with the part of funding terrorism? But yet there is no public statement, yet there is no consequence.

How many unusual transactions have been to the prosecutor's office? In terms of a number. How many are they?

The faction would like to know why it would be difficult to provide information on the number of cases of unusual transactions at the prosecutor. Why is that a situation not to be disclosed to this body? The faction is not clear on that. If you can tell us how many were in the past, what is the situation of not telling us how many are in the process or have been for the year that relates to the amount that was mentioned.

The United St. Maarten Party-faction has taken note of the draft and mentions that it is of the opinion that there is a lot of interconnectivity between these 3 laws, Criminal Code, Criminal Procedure Code and the Civil Code, as presented to Parliament. The notions as to why these laws are being presented to Parliament is because we need to comply with international regulations. In reviewing the law, the faction also took aforementioned into mind. The faction believes that the Criminal Code and Civil Code should be disseminated in the English language. The faction would like to know if the bar association was consulted on these changes? The faction did not see this in the documentation? Were police officers, banks consulted? What is the position of various stakeholders? The faction cares more about the position of the people, business community and legal system, before looking at the position of what these international organizations want in Sint Maarten. What level of stakeholder consultation was done? Will all the documentation related to these laws be presented in English to the public for public consumption?

The faction is of the opinion that there are a lot of things in the laws that go way beyond FATF regulations. The faction would like to see verbatim; this is the CFATF regulation and this is the change. The faction would like to ascertain that the changes that are proposed article by article are indeed from FATF regulations. If there was a change to the law the faction would like to see article 4 is changed in accordance with which FATF recommendation. The faction would then like to receive an explanation on the changes that do not correspond to a particular FATF recommendation.

Has the Ministry also looked at what will be counterproductive about implementing these 3 laws? What are you predicting are possible negative outcomes from the implementation of this law?

The faction sees a lot of constitutional issues with regards to breaches of privacy. Has the Ministry done a constitutional test of these laws, particularly the Civil Code that we are talking about now? Were there any things added to these laws from the Ministry simply for the purpose of, if we are going to change the code well then outside of the FATF recommendations, these are the things that we also decided to add?

Can the Government provide Parliament with the main point of contact for Sint Maarten, the executive branch? If Parliament would like to invite the CFATF themselves, or a delegation of Parliament to visit them, can we receive that information? What have Trinidad and Tobago done to combat terrorism financing because the faction has not seen any public statement given to that country for funding and financing terrorism? Has there been any indication here in Sint Maarten that we are sponsoring terrorism in any form or fashion? The faction is of the opinion that the laws and the organization is biased towards small islands. It can't be that a country of 1.3 million people in comparison to another country with 60 or 70 thousand people should be held with the same standards when it comes to combating financing terrorism when they have been

Which legal professionals were consulted? How much of the legal community does that represent? Who was involved and what were their task with informing their fellow

legal professionals? The faction is of the opinion that a public statement is not equal to doom for Sint Maarten. Please outline which articles is for CFATF and which are outside the recommendations. Who are we doing this for? The issue of corresponding banking. IMF in its report identifies 4 main factors for the lack of interest in correspondent banking. They list as the main factor, the profitability of the banking sector. We have moved from an interest-based economy to a fee-based economy. We have to find ways that makes it more profitable for banks to operate here.

The faction suggests to request to Government to review, pull back and bring a new draft that entails what the CFATF wants and don't sneak in additional things. These laws are making Sint Maarten impossible to do any business. The faction mentions that most banks in the Simpson Bay area are closing their doors. Only Philipsburg will be having banks, which in the opinion of the faction is not good. Why are we not offering local people to open up their own banks? The faction is of the opinion that these legislations are for countries who deal with the Middle East. The faction has a serious issue with how these legislations are being proposed.

The faction would like to confirm if there were any changes to the proposed action plan for Sint Maarten and if Parliament can receive the latest version of the action plan between Sint Maarten and CFATF or FATF.

The faction would also like to know if Parliament can get a copy of the part of the law that Curaçao or Aruba has passed already, of this law that we are being asked to pass. How did they deal with theirs compared to what we are doing? Have they passed theirs already? If yes, can we get a copy of it so that we can look at it and see what the differences are between them and us?

This report is to be considered the Final Report.

Stipulated in the meeting of the Central Committee of September 12th, 2019.

The Reporter,

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