

NATIONAL GAZETTE

NATIONAL DECREE, PROVIDING FOR GENERAL MEASURES, of September 8, 2010 for the implementation of articles 22a, second paragraph, and 22b, second paragraph, of the Unusual Transactions National Ordinance¹ (National Decree Penalties and Fines Reporters Unusual Transactions)

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

taking into consideration:

that for the implementation of articles 22a, second paragraph, and 22b, second paragraph, of the Unusual Transactions National Ordinance, the amount of the penal sum and penalty that can be imposed by the Supervisor within the meaning of the National Ordinance in question, must be determined;

Has decided, after consultation with the Advisory Council:

Article 1

In this National Decree, “National Ordinance” shall be understood to mean: the Unusual Transactions National Ordinance.

Article 2

1. The amount of the penal sum, referred to in article 22a, first paragraph, of the National Ordinance is maximally NAF. 500,000.00 for not complying or not complying in due time with the obligations imposed by or pursuant to articles 11, 12, second paragraph, 13, 20, second paragraph, and 22h, third paragraph, of the National Ordinance.
2. The Supervisor can moderate the forfeited penal sum in particular cases.
3. The forfeited penal sum shall be due to the Supervisor in question that has imposed it.

Article 3

¹ N.G. 2010, no. 41.

1. The amount of the penalty, referred to in article 22b, first paragraph, of the National Ordinance is maximally NAF. 1,000.00 for not complying or not complying in due time with the obligations imposed by or pursuant to articles 11, 12, second paragraph, 13, 20, second paragraph and 22h, third paragraph, of the National Ordinance.
2. The Supervisor can moderate the imposed penal sum in particular cases.
3. Penalties shall be due to the Supervisor in question that has imposed them.

Article 4

1. Without prejudice to articles 2, first paragraph, and 3, first paragraph, the Supervisor can increase the imposed penal sum, respectively penalty, once only by maximally NAF. 500,000.00, respectively NAF. 1,000.00, if, on the day on which the violation is established, a year has not yet lapsed, after an earlier violation, consisting of not complying with the same legal obligation has been established and the decision, whereby the penal sum, respectively the penalty was imposed due to the earlier violation has become irrevocable.
2. The Supervisor shall take into account a possible moderation, as referred to in articles 2, second paragraph, and 3, second paragraph, when increasing the imposed penal sum or penalty.
3. If the Service Provider, also after imposing an increased penal sum or an increased penalty, as referred to in the first paragraph, does not comply with his obligations, the Supervisor in question shall report to the Public Prosecutions Department, while transferring all the relevant documents related to the case in view of criminal proceedings.

Article 5

This National Decree becomes effective as of the day after that of the date of issue of the National Gazette, in which this National Decree is placed.

Article 6

This National Decree shall be quoted as: Penal Sums and Administrative Penalties for Reporters of Unusual Transactions National Decree.

Given in Willemstad on September 8, 2010
F.M.D.L.S. GOEDGEDRAG

The Minister of Finance,
E.T.M. DE LANNOOY

Issued on September 23, 2010
The Acting Minister of General Affairs
and Foreign Relations,
R.E. DUNCAN

EXPLANATORY MEMORANDUM

General

In this National Decree, the amount of the penal sums and the administrative penalties for the various violations of the Unusual Transactions National Ordinance (N.G. 2010, no. 41) is regulated. A system has been opted for in which the amount of the penalty depends on the seriousness of the violation. Furthermore, considerations of simplicity and practical feasibility for those who are in charge of the implementation have also played a role when opting for this system.

A penalty can be imposed on any individual violation. This means that, if, for example, 10 transactions have not been reported, there are 10 violations.

The Supervisors must establish policy procedures regarding the (maximum) imposition of penalties. In this case, the seriousness of the violation, the type of reporter, the magnitude and the amount of the transactions and the number of times that a violation has been committed must be taken into account.

If in appropriate cases the imposition of penalties for various violations is still disproportionate, or failing to comply with the National Ordinance is justified, the Supervisors can proceed to moderating the imposed penalty. The Supervisors will verify per individual case whether this possibility can be used.

On the other hand, it can also happen that there is a repetition of the violation within a certain period, while the maximum of the imposed administrative sanction(s) has been reached. In that case, the Supervisor is offered the authority to impose once only a maximum administrative sanction (article 4, first paragraph). Should the Service Provider still be guilty of a violation after this imposed sanction, the Supervisor shall then report to the Public Prosecutions Department in view of criminal proceedings (article 4, third paragraph).

With regard to the penal sum, it must be stated that an order for periodic penalty payments is intended to undo the violation or to prevent further violation or repetition of the violation. Depending on the seriousness of the violation, and the relevance of undoing this as soon as possible, the respective Supervisors will establish the amount of the penal sum in conformity with the provisions in article 2.

Financial

The sums collected, pursuant to this National Decree, will be used for the time being for covering the collection costs. Depending on the Supervisor, the balance will go to the Government, respectively the supervising agencies. As for the Bank of the Netherlands Antilles, a possible credit balance will be paid to the Government as part of its profit, pursuant to the 1985 Central Bank Statute.

The Unusual Transactions Reporting Office (“*MOT*”) gets the authority to impose penal sums and administrative penalties on the so-called non-financial institutions that are obliged to report, which fall under the supervision regime of the Reporting Office. The

collection of the aforementioned sums will be conducted by the Tax Collector, due to which the financial consequences of the present Decree will be absorbed within the Ministry of Finance. In a work agreement protocol between the *MOT* and the Tax Collector, in which, among other things, agreements on the manner of information exchange between the two services have been established, an estimate of the costs of the services provided, ensuing on the basis of these work agreements, will be added to that protocol.

At present, it cannot be indicated how many violations the institutions will commit and what the penalties involved will be. This means that the costs that the Supervisors incur in that framework are difficult to indicate at this moment.

Advisory Council

The Advisory Council issued a recommendation on July 6, 2010 (RvA no. RA/15A-10-LB). This recommendation has been taken over as a whole. In the short term, the Government will establish rules in conformity with article 22g of the Unusual Transactions National Ordinance with regard to Supervisors exercising the authority to impose the administrative sanctions. The Government has also made use of the opportunity to perform some editorial and technical adjustments.

Minister of Finance,
E.T.M. DE LANNOOY

Minister of Justice,
O.V.E. LEEFLANG