

**NATIONAL GAZETTE**

**NATIONAL DECREE, PROVIDING FOR GENERAL MEASURES, of September 8, 2010 for the implementation of articles 9, second paragraph, and 9a second paragraph, of the identification in the event of providing services<sup>1</sup> (National Decree Penalties and Fines Service Providers)**

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IN THE NAME OF THE QUEEN!  
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THE GOVERNOR of the Netherlands Antilles,

taking into consideration:

that for the implementation of articles 9, second paragraph, and 9a, second paragraph, of the Service Provision Identification Act, the amount of the penal sum and penalty that can be imposed by the Supervisor within the meaning of said National Ordinance, 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 Service Provision Identification National Ordinance.

Article 2

1. The amount of the penal sum, referred to in article 9, first paragraph, of the National Ordinance is maximally NAG. 500,000.00 for not complying or not complying in due time with the obligations imposed by or pursuant to articles 2, first, second and fifth paragraphs, 3, 5, first through fourth paragraph and sixth paragraph, 6, 7, 8 and 11, third paragraph, of the National Ordinance.
1. The Supervisor can moderate the forfeited penal sum in particular cases.
2. The forfeited penal sum shall be due to the Supervisor in question that has imposed it.

Article 3

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<sup>1</sup> N.G. 2010, no. 40

1. The amount of the penalty, referred to in article 9a, 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 2, first, second and fifth paragraphs, 3, 5, first through fourth paragraph and sixth paragraph, 6, 7, 8 and 11, third paragraph, of the National Ordinance.
2. The Supervisor can moderate the 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 becoming 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 such to the Public Prosecutions Department, while transferring all relevant documents related to the case in view of criminal prosecution.

#### 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 Government Decree shall be quoted as: Penal Sums and Administrative Penalties Service Providers 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 Service Provision Identification National Ordinance (N.G. 2010, no. 40 (SPINO)) 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, a client has not been identified 10 times, there are 10 violations in conformity with the SPINO.

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 the violations have 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 SPINO 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 will 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 carried out by the National 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/15-10-LB). This recommendation has been taken over as a whole. In the short term, the Government will establish rules in conformity with article 9f of the Service Provision Identification 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