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Kingdom Act of 7th July 2010 regulating the establishment, duties and powers of the Law Enforcement Council of Curaçao, of St. Maarten and of Bonaire, St. Eustatius and Saba (Kingdom Act on the Law Enforcement Council)

We, Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

Greetings to all who shall see or hear these presents !

Be it known:

Whereas, We have considered that the governments of the Netherlands and the Netherlands Antilles and the Executive Councils of Curaçao and St. Maarten are desirous to cooperate by the establishment of a body which is charged with the inspection of agencies and institutions constituting part of the judicial circuit in Curaçao, in St. Maarten and on Bonaire, St. Eustatius and Saba, that they wish to mutually regulate this cooperation in a Kingdom Act pursuant to Article 38, second paragraph, of the Charter for the Kingdom, and that the governments of the Netherlands and the Netherlands Antilles and the executive councils of Curaçao and St. Maarten agree with the contents of said regulation;

We, therefore, having heard the Council of State, and in consultation with the States General, the provisions of the Charter for the Kingdom having been observed, have approved and decreed as We hereby approve and decree:

CHAPTER 1 DEFINITIONS

Article 1

1. In this Kingdom Act the undermentioned terms shall be defined as follows:
 - a. *administrative body/authority*
 - an administrative body of a legal entity in the countries which is established by virtue of public law or;

- another person or board of public status with public authority in the countries;
- b. *the countries*: Curaçao, St. Maarten or the Netherlands, insofar as Bonaire, St. Eustatius and Saba are concerned;
- c. *Joint Court of Justice*: Joint Court of Justice of Aruba, Curaçao, St. Maarten and of Bonaire, St. Eustatius and Saba;
- d. *Council*: Council for law enforcement as referred to in article 2, first paragraph;
- e. *Our Minister*: Our Minister of Justice of Curaçao, Our Minister of Justice of St. Maarten or our Minister of Justice of the Netherlands whom it concerns, as referred to in the second up to and including the fifth paragraph;
- f. *Our Minister concerned*: Our Minister of Justice of Curaçao, Our Minister of Justice of St. Maarten and Our Minister of Justice of the Netherlands whom it concerns, as referred to in the second up to and including the fifth paragraph, jointly;
- g. *Representative body*: the Parliament of Curaçao, the Parliament of St. Maarten and the Lower House of the States General;
- 2. Insofar as the inspection exercised by the Council is related to the police or the training of the police and is exercised, in whole or in part, for the benefit of the Netherlands; insofar as it concerns Bonaire, St. Eustatius and Saba, Our Minister of the Netherlands whom it concerns, is : Our Minister for the Interior and Kingdom Relations in agreement with Our Minister of Justice of the Netherlands.
- 3. In case of the application of articles 36, fifth paragraph, 37, sixth paragraph and 42 Our Minister of the Netherlands whom it concerns : Our Minister for the Interior and Kingdom Relations and Our Minister of Justice of the Netherlands.
- 4. Insofar as the inspection by the Council is related to agencies and institutions as referred to in article 3, first paragraph, under b, judicial cooperation as referred to in article 3, third paragraph, the supervision of aliens or of the border control for the benefit of Bonaire, St. Eustatius and Saba, Our Minister of the Netherlands whom it concerns, is : Our Minister of Justice.
- 5. In case other than those mentioned in the second up to and including the fourth paragraph Our Minister of the Netherlands whom it concerns, is : Our Minister of Justice of the Netherlands in agreement with our Minister for the Interior and Kingdom Relations.

CHAPTER 2 ESTABLISHMENT AND DUTIES

Article 2

1. There shall be a Law Enforcement Council.
2. The Council is an administrative body of Curaçao, St. Maarten and the Netherlands.
3. The Council has legal personality.

Article 3

1. The Council is charged in the countries with the general inspection of the following organizations:
 - a. the police, the training of the police and the public prosecutor's office;
 - b. agencies and institutions where prison sentences and measures for the restriction of or deprivation of liberty are executed, or where probation and after-care service and victim care are provided to adults and juveniles;
 - c. other organizations designated by national ordinance or by law which fall under the responsibility of Our Minister and are constituent parts of the judicial circuit.
2. The Council carries out the inspection referred to in the first paragraph, with regard to:
 - a. the effectiveness;
 - b. the quality of the performance of duties; and
 - c. the management.
3. The Council is furthermore charged with the general inspection of the quality and effectiveness of the judicial cooperation between the countries;
4. The Council may by national ordinance or by law be charged with the providing of advice on the handling of complaints at administrative bodies on the manner in which an organization as referred to in the first paragraph, has acted in a particular matter.
5. The Council may by national ordinance or by law be charged with the supervision of the processing of police data. In that regard powers necessary for the performance of said duties may be granted to the Council.
6. The Council shall not carry out inspections in case the Safety Board referred to in article 2 of the Kingdom Act on the Safety Board, is conducting an investigation.

Article 4

1. Our Ministers may give instructions to the Council with regard to the implementation of the annual plan.
2. Such instructions cannot be related to the methodology to be applied, the opinion forming of the Council and its investigation report.

CHAPTER 3 STRUCTURE AND COMPOSITION OF THE BOARD

§ 1. *The Council and its members*

Article 5

The Council shall consist of three members.

Article 6

The members of the Council shall be appointed, suspended and removed by Royal Decree. They shall be appointed for a period not exceeding four years and can be reappointed once only.

Article 7

1. Our Minister of one of the countries shall make a recommendation for the appointment of one of the members in agreement with Our Minister of the other two countries.
2. Prior to entering upon their duties the members shall take the oath or make a solemn affirmation before the President of the Joint Court of Justice in conformity with a formula laid down in the annex to this Kingdom Act.

Article 8

1. The members of the Council shall be appointed on the basis of the expertise necessary for the performance of the duties of the Council.
2. The members must have Dutch nationality.
3. The members shall not hold positions whose exercise is inappropriate in view of a proper performance of their duties or in view of the preservation of their impartiality and independence or of the trust bestowed therein.
4. The members of the Council shall disclose their intention to accept an ancillary position to our Minister of one the countries and shall simultaneously thereof inform the other ministers.
5. The Council shall disclose the ancillary position by publication on the Council's website.

Article 9

The chairmanship of the Council shall rotate annually among the three members.

Article 10

A member of the Council shall be discharged:

- a. at his request, effective at the latest on the first day of the third calendar month of the day on which Our Minister has received the resignation request;
- b. upon reaching the age of 70;
- c. in case he is permanently unfit, by reason of illness or disability, to perform his duties;
- d. upon the acceptance of a position as referred to in article 8, third paragraph;
- e. upon losing the Dutch nationality;
- f. in case he is convicted for a crime by a final and conclusive court decision, or in case he is deprived of his liberty as a consequence of such a decision;

- g. in case he is placed under guardianship pursuant to a court decision that has not yet become final and conclusive, in case he has been declared bankrupt, has been granted a moratorium of payments or in the event he is committed by a final and conclusive court order for failure to pay his debts;
- h. in case Our Ministers are of the opinion that his acts or omissions are seriously detrimental to the trust placed in him;

Article 11

1. A member of the Council shall be suspended:
 - a. in case he is remanded in custody;
 - b. in case he is convicted for a crime by a court decision that has not yet become final and conclusive, or in case he is deprived of his liberty as a consequence of such decision;
 - c. in case he is placed under guardianship, has been declared bankrupt, has been granted a moratorium of payments or has been committed by a court decision that has not yet become final and conclusive, for failure to pay his debts;
2. A member of the Council can be suspended in case a preliminary inquiry is instituted against him with regard to a criminal offense or in case there is another strong suspicion that there are facts or circumstances as referred to in article 10, subsections **c** up to and including **h**, which could lead to dismissal.
3. In the case referred to in the second paragraph, the suspension will be lifted after three months. The suspension may be extended each time by a period not exceeding three months. The suspension shall be terminated as soon as there are no longer any grounds for suspension.

Article 12

The proposal for the decisions taken by virtue of articles 10 and 11, shall be made by Our Minister.

Article 13

The legal status of the members of the Council shall be regulated by or by virtue of an order in council, if this status is not provided for by this Kingdom Act.

§ 2. The secretariat

1. The Council has a secretariat at its disposal for the provision of support to the Council.
2. The Secretariat maintains offices in Curaçao and St. Maarten as well as on one of the islands Bonaire, St. Eustatius or Saba.
3. Each of the offices is headed by a secretary.

4. In respect of their duties for the Council the secretaries shall be answerable exclusively to the Council
5. The Council shall appoint, suspend and dismiss the secretaries and the other members of the secretariat.
6. The decision to appoint a member of the secretariat shall contain the name of the country where the appointee is stationed.
7. Every member of the secretariat shall be competent and deployable in all countries.

Article 15

1. The rules applicable to public officers appointed at ministries in Curaçao, respectively, St. Maarten, shall be applicable to the legal status of the members of the secretariat, on the understanding that wherever powers are conferred to a minister in said rules, such powers shall be exercised by the Council, unless it concerns the power to establish rules.
2. The rules applicable to public officers appointed by our Minister for the Interior and Kingdom Relations in order to be employed exclusively on Bonaire, St. Eustatius or Saba, shall be applicable to the legal status of the members of the secretariat, on the understanding that wherever powers are conferred to a minister in said rules, such powers shall be exercised by the Council, unless it concerns the power to establish rules.

Article 16

1. The Council shall establish a protocol of rules with regard to its working procedure.
2. The protocol shall be made public within four weeks after its establishment by publication on the website of the Council and by publication in a widely obtainable official journal of each of the countries.

CHAPTER 4. THE CONDUCTING OF THE INSPECTION BY THE COUNCIL

§ 1. General provisions

Article 17

1. The members of the Council shall hold their office in independence.
2. A member of the Council or a member of the secretariat may not act as
 - a. attorney, representative or advisor in disputes for:
 - 1° an opposing party of the Council;
 - 2° a party that is being advised by the Council;
 - 3° an agency or institution inspected by the Council, or
 - 4° the Council; and may not :

- b. directly or indirectly enter into an agreement with the Council with the exception of agreements directly related to the appointment as member of the Council or of the secretariat;
- c. act as representative or advisor for third parties in connection with the entry by the Council into agreements as referred to under b.

Article 18

1. For the purpose of exercising its powers the Council may make use of the services of experts including, in any case, supervisors employed at inspection services of the countries.
2. For the exercise of its powers with regard to Bonaire, St. Eustatius and Saba the Council shall make use of Dutch inspection services with expertise in this field.

Article 19

The Council shall announce an inspection in advance to the agency or institution concerned, unless an unannounced inspection is desirable in the interest of the investigation.

Article 20

Any person who is involved in the implementation of this Kingdom Act is under the obligation to preserve the confidentiality of all data that comes to their attention while performing their duties and any person who knows or may reasonably suspect that said data is confidential and who is not under any obligation on account of his office, occupation or statutory provision relating to said data, is obligated to preserve the confidentiality of said data, except if he is obliged under any statutory provision, or within the context of his duties in the implementation of this Kingdom Act, to divulge such data.

§ 2. Powers of the Council

Article 21

1. The Council is empowered at its own discretion within the context of its inspection duties, referred to in article 3, first paragraph, to institute an investigation.
2. Acting upon an appurtenant request by Our Minister, the Council shall furthermore carry out an investigation as referred to in the first paragraph.

Article 22

The Council shall exercise its powers exclusively to the extent such is reasonably necessary for the performance of its duties.

Article 23

1. The Council shall have the power, availing itself of the required equipment, to enter the premises and buildings of the organizations referred to in article 3, first paragraph.
2. The Council shall have the power to enter said locations in the company of persons appointed by the Council for that purpose.
3. When entering a location as referred to in the first paragraph, the members of the Council, the appointed assistants of the secretariat as well as the experts, shall carry an identity card issued by Our Minister. If requested, they shall immediately show the identity card.
4. The identify card shall contain a photograph of the holder and shall, in any case, state his name and capacity.

Article 24

The Council shall have the authority to demand information.

Article 25

The Council shall have the authority to demand that an identity card generally recognized by or virtue of a national ordinance or by or by virtue of the law, shall be shown to it.

Article 26

1. The Council shall have the authority to demand access to business-related data and records.
2. The Council shall have the authority to make copies of the data and records.
3. In case the making of copies cannot take place on the spot, the Council shall have the authority for that purpose, to take along with them the data and records for a short period of time, against issue of a written proof of receipt.

Article 27

1. The Council shall have the authority to investigate means of transportation with regard to which the Council is entrusted with an inspection duty.
2. The Council shall have the authority to inspect the cargo load of means of transportation with which, in the Council's reasonable opinion, items are transported with regard to which an inspection duty is entrusted to the Council.
3. The Council shall have the authority to demand that the driver of a means of transportation with regard to which an inspection duty is entrusted to the Council, shall show the statutorily prescribed records to the Council.

4. The Council shall be authorized, for the purpose of exercising the authority referred to in the first paragraph; to demand from the driver of a vehicle or from the captain of a vessel, that said driver or captain shall stop his means of transportation and take such vehicle to a location designated by the Council.
5. The Council shall establish rules regarding the manner in which the order to stop shall be given.

Article 28

1. Every person is under the obligation, within the reasonable period stipulated by the Council, to render all cooperation to the Council, which it may reasonably demand in the exercise of its powers.
2. Those who are obliged to observe secrecy by virtue of their office, occupation or statutory provision, may refuse to cooperate with the Council, insofar as such refusal ensues from their obligation to observe secrecy.

Article 29

1. The provisions contained in articles 22 up to and including 29 with regard to the Council shall also be applicable to persons appointed by the Council, insofar as the powers conferred upon such persons are specified in the appointment. These powers shall be mentioned in the identity card referred to in article 23, third paragraph.
2. The Council may appoint persons as referred to in the first paragraph only from the circle of members of the Council, of employees of the secretariat and experts as referred to in article 18, first paragraph.
3. In the exercise of their powers the experts appointed in pursuance of the first paragraph, shall act under the responsibility of the Council.

§ 3. Reporting by the Council

Article 30

1. The Council shall draw up an inspection report on the investigation carried out by the Council.
2. The Council shall provide the opportunity to the agency or institution concerned, to react to the inspection report within a reasonable period stipulated by the Council. Subsequently, the Council will give the opportunity to Our Minister concerned, to react to the inspection report within a reasonable period stipulated by the Council.
3. Upon receipt of the reaction from Our Minister concerned, or after the expiry of the period referred to in the second paragraph, second sentence, the Council shall adopt the inspection report. Consequent upon its findings the Council may make

recommendations to Our Minister concerned, with regard to any measures to be adopted.

4. Upon its adoption the inspection report shall be sent by the Council to Our Minister concerned.
5. Within six weeks after the receipt of the report Our Minister concerned, shall send the inspection report together with his reaction to the representative body of the country concerned.

Article 31

1. Except as provided in the second and third paragraphs, the Council shall not publicize an inspection report, referred to in article 30, first paragraph until a period of six weeks has elapsed after the report was dispatched to Our Minister concerned.
2. Barred from publication is that part of the report:
 - a. which can be detrimental to the unity of the governments of Curaçao, St. Maarten or the Netherlands;
 - b. which may cause harm to the safety of Curaçao, St. Maarten or the Netherlands;
 - c. which concerns industrial or manufacturing data disclosed to the government in confidence;
 - d. which concerns personal data, unless the providing of such data manifestly do not violate the person's privacy;
3. Publication of the report or parts thereof shall furthermore be refrained from, if the interest of disclosure does not outweigh the importance of the following interests:
 - a. the relation of Curaçao, St. Maarten or the Netherlands with states and with international organizations;
 - b. the economic or financial interests of Curaçao, St. Maarten or the Netherlands;
 - c. the investigation and prosecution of criminal data;
 - d. the inspection, checks or the supervision carried out by or on behalf of administrative bodies;
 - e. the respect for personal privacy;
 - f. the prevention of disproportionate favoring or prejudicing of natural persons or legal persons.

Article 32

In case of systematic failure on the part of Our Minister concerned, to act upon the recommendations of the Council, the Council may thereof notify the representative body of the country concerned as well as the council of ministers of the Kingdom.

Article 33

1. Each year before May 1st the Council shall present a report on each country about the state of law enforcement, determined on the basis of its duties in the preceding year.
2. The report on a country as referred to in the first paragraph shall be presented to Our Minister concerned, and to the representative body concerned.

CHAPTER 5. PROCESSING OF COMPLAINTS

Article 34

1. In case the Council is charged, by national ordinance or by law, with the providing of advice on the processing of complaints as referred to in article 3, fourth paragraph, then the second up to and including the sixth paragraph of this article shall be applicable.
2. The administrative body, referred to in article 3, fourth paragraph, shall report to the complainant that advice is being solicited from the Council.
3. The hearing of the complainant and the administrative body shall be conducted by the Council. The Council may assign the hearing to one of its members.
4. The Council may refrain from the hearing in case the complaint is manifestly unfounded or in case the complainant and the administrative body have declared that they will not make use of the right to be heard.
5. The Council shall send a report of its findings, accompanied by an advice and recommendations, to the administrative body responsible for the assessment of the complaint. An account of the hearing shall be included in the report.
6. In case the administrative body's conclusions differ from the advice, the reason for said difference shall be stated, and the advice shall be send to the complainant.

CHAPTER 6. THE FUNDING AND THE MANAGEMENT OF THE COUNCIL

Article 35

1. The Council will be funded from a contribution furnished by the countries.
2. The total amount of costs to be paid to the Council shall be determined by Our Ministers.
3. Each country shall bear the costs incurred by the secretariat specifically for the inspection and advising in the country concerned.
4. Our Ministers shall share the costs involved for general support provided to the Council.

Article 36

1. Annually, before October 1 the Council shall send an annual plan and a budget to Our Ministers regarding the ensuing year.
2. The budget shall comprise an estimate of the receipts and charges, an estimate of the projected investment expenses and an estimate of the revenues and expenditures with a breakdown of the costs referred to in article 35, third and fourth paragraphs.
3. The annual plan shall provide an explanatory statement on each of the budget items separately. The Council shall make a distinction according to its activities per country.
4. Unless the activities to which the budget is related were not carried out before, the budget shall contain a comparison with the budget of the current year and the annual account most recently approved.
5. The decision to approve the annual plan and the budget, is subject to the approval of Our Ministers.
6. Our Ministers shall send the annual plan to the representative bodies.

Article 37

1. If requested to do so, the Council shall provide to Our Ministers the information required for the performance of its duties. The Council shall on its own initiative provide such information immediately to Our Ministers, in case there are considerable differences, and in case there is a threat of considerable differences arising between the actual and the estimated receipts and charges or revenue and expenditure.
2. Annually before April 1 the Council shall draw up an annual report on the preceding year.
3. The annual report shall contain a description of the exercise of duties as well as the policy conducted and in any case an explanatory statement concerning the activities realized and an annual account.
4. The Council shall send the annual report to the representative bodies.
5. The annual financial statement shall render account of the expenditure, receipts, if any, and the financial management conducted.
6. The decision for the adoption of the annual account shall require the approval of Our Ministers.
7. The approval may be denied in case of inconsistency with the law or the general interest.

Article 38

1. The Council shall form an equalization reserve.

2. The difference between the receipts realized by the Council and the realized expenditure of the activities shall go to the credit, respectively, charged to the equalization reserve.
3. The interest received from the equalization reserve shall be added to the equalized reserve.
4. Our Ministers may establish rules with regard to the formation and the extent of reserves.

Article 39

The Council may perform legal acts under private law insofar as such acts result from the annual plan and are covered within the Council's budget approved under article 36, fifth paragraph.

Article 40

1. The annual account shall be accompanied with a statement on the truth and fairness issued by an accountant unanimously appointed by the Council.
2. When appointing the accountant the Council shall stipulate that, if so requested, Our Ministers shall be given a clarification of the accountant's auditing work.
3. The statement referred to in the first paragraph, shall also be related to the proper use of the resources by the Council.
4. The accountant will add to the statement referred to in the second paragraph, a report of his findings on the question whether the management and the organization conducted by the Council, are in conformity with the requirements of efficiency.

Article 41

The powers of the General Audit Chamber in the countries shall extend to the Council. The General Audit Chambers shall consult with each other with regard to the supervision of the Council.

CHAPTER 7. FINAL AND TRANSITIONAL PROVISIONS

Article 42

Within five years after the entry into force of this Kingdom Act Our Ministers shall send an evaluation report on the effectiveness and the effects of this Kingdom Act in practice. Prior

to the evaluation, the countries shall jointly establish the criteria, the themes and the composition of the evaluation committee.

Article 43

1. Pursuant to article 38, second paragraph of the Charter for the Kingdom, this Kingdom Act may by mutual consultation be amended by the Kingdom Act.
2. Consequent upon the evaluation referred to in Article 42, this Kingdom Act may be terminated by mutual consultation.

Article 44

This Kingdom Act shall enter into effect on a date determined by Royal Decree.

Article 45

This Kingdom Act shall be cited as : Kingdom Act for Law Enforcement.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees, and that all ministerial departments, authoritative bodies and officials whom it may concern, shall diligently implement it.

Chamber document
32020(R 1887)

Thus done in the Hague on July 7, 2010

Beatrix

The Minister of Justice
Minister for the Interior and Kingdom Relations
E.M.H. Hirsch Ballin

The State Secretary for the Interior and Kingdom Relations
A.Th.B. Bijleveld –Schouten

Issued on September 1, 2010

The Minister of Justice
E.M.H. Hirsch Ballin

Annex, referred to in article 7, second paragraph

Formula for taking the oath or affirming pledge by the members of the Council.

I swear/affirm that I will be faithful to the King, and obey the statutory regulations.

I swear/affirm that I have not given or promised any gift or favor, directly or indirectly, under any name or pretext whatsoever.

I swear/affirm that I have never accepted and will not accept, either directly or indirectly, under whatever name, any gift from any person of whom I know or suspect that he is or will be involved in any inspection, whereby my official duties might be required.

So help me God !

This I declare and promise.

Onthe abovementioned oath/pledge was sworn

Before

The

1

2.

[END OF TRANSLATION]