

House of Representatives of the States General

2

Session year 2008-2009

32 020 (R 1887)

Regulations of the establishment, tasks and powers of the Law Enforcement Council of Curacao, St. Maarten and of Bonaire, St. Eustatius and Saba (Kingdom Act regarding the Law Enforcement Council)

Nr. 3

EXPLANATORY MEMORANDUM

I. GENERAL PART

1. Introduction

This bill regulates the establishment of the Law Enforcement Council. The Council is an inter-country body of Curacao, St. Maarten and the Netherlands. The Council is charged with the general inspection of the effectiveness and quality of various services and institutions that form a part of the judicial chain in Curacao, St. Maarten and on Bonaire, St. Eustatius and Saba, and of the effectiveness and quality of the judicial cooperation in Curacao, St. Maarten and the Netherlands insofar as it concerns Bonaire, St. Eustatius and Saba. For practical reasons, the inspection of all police tasks, thus both the judicial tasks as well as the tasks for the purpose of maintaining public order, are put in the hands of the Council.

Furthermore, the bill offers each of the countries the possibility to charge the Council with advising on the handling of complaints regarding the conduct of organizations in the judicial chain and with supervision of the processing of police data.

The bill results from the agreements in the Final Declaration of the government meeting concerning the future constitutional status of Curacao and St. Maarten of 2 November 2006. Among other things, it is agreed herein that, under or pursuant to a consensus Kingdom Act, a Law Enforcement Council shall be established to monitor the quality of all components of the judicial chain (with the exception of the Joint Court) and the cooperation between Curacao, St. Maarten and the Netherlands in the field of justice.

The governments of the Netherlands and the Netherlands Antilles and the executive councils of Curacao and St. Maarten agree that it is important that inspection of the judicial chain is well regulated. Law enforcement and administration of justice belong to the core responsibilities of the government in the countries to protect the safety of individual citizens and the community as a whole. Herewith, drastic means may be implemented and measures taken for the public. It is important to have good visibility into the functioning of the organizations and institutions that implement means or execute measures in relatively great independence. It is the intention that information is obtained about the quality of the execution of the law enforcement and administration of justice by services and institutions that play a role here. The reports of the Law Enforcement Council offer the responsible ministers the opportunity to take measures in a timely manner to improve the (components of) the judicial chain if so warranted. The inspection by the Law Enforcement Council supports the ministerial responsibility in each of the countries.

Regulating the inspection task on judicial services and institutions is an autonomous power of the countries. There are, however, reasons to regulate this task jointly. In the Final Declaration, various agreements have been made about cooperation in the field of administration of justice and law enforcement, such as the appointment of a joint procurator general, cooperation in the fight against cross-border crime, cooperation

between police forces and the mutual provision of detention capacity. These forms of cooperation, the formation of two new countries in the Kingdom that each must provide for inspections, and the isolated location of Bonaire, St. Eustatius and Saba, in relation to the European part of the Netherlands, make it attractive to arrange the inspection among themselves.

From this notion, has been agreed in the Final Declaration to provide for an inter-country inspection body. In accordance with agreements in the Final Declaration, it was decided to lay down the mutual regulations regarding the inspection of the quality of the chain of law enforcement in a so-called consensus Kingdom Act pursuant to section 38, subsection 2 of the Charter.

The remainder of the general part of this memorandum is construed as follows. In paragraphs 2 and 3, attention is paid to the drafting of the bill and the tasks of the Law Enforcement Council respectively. Paragraph 4 discusses the independent position of the Council. Paragraph 5 deals with the composition of the Council including the manner in which the members are appointed. The composition and organization of the secretariat of the Council are outlined in paragraph 6. Paragraph 7 concerns the powers of the Council as inspector. Paragraph 8 further discusses the possible role of the Council in the handling of complaints. Paragraphs 9, 10 and 11 deal with funding and management, implementation and evaluation respectively.

2. Drafting of the bill

A number of important elements of this Kingdom Act arise from the earlier mentioned Final Declaration in which the establishment of the Council by consensus Kingdom Act and a number of important aspects are laid down, such as the independence of the Council and the task of monitoring the quality of all components of the chain of law enforcement and of the cooperation between Curacao, St. Maarten and the Netherlands in the field of justice.

The island councils of St. Maarten and Curacao adopted the Final Declaration on 15 November 2006 and 6 July 2007 respectively.

The present bill has been prepared by the Project Group administration of justice, law enforcement and constitutional affairs. This project group has been set up at the time of the Final Declaration and charged with the preparation and implementation of the agreements in the Final Declaration about law enforcement and administration of justice. This official project group consists of representatives of the Netherlands Antilles, St. Maarten, Curacao and the Netherlands.

On 29 April 2009 the Council of State of the Kingdom advised on the bill.

3. Tasks of the Law Enforcement Council

Chapter 2 of the bill regulates the establishment and tasks of the Law Enforcement Council. The Council is charged with monitoring the quality of all components of the judicial chain (with the exception of the Joint Court of Justice) and the cooperation between the countries in the field of justice. Each of the countries may charge the Council with advising on the settlement of complaints with administrative authorities about the manner in which an organization as referred to in Section 3, subsection 1, has conducted itself. In addition, each of the countries may charge the Council with the supervision of the processing of police data. In Section 3 of the Kingdom Act, the tasks and scope of the Council are laid down. The tasks are discussed below.

Inspection of the enforcement of custodial sentences c.a., probation service and care of victims

In Curacao, St. Maarten and on Bonaire, St. Eustatius and Saba, the Council is charged with the general inspection of prisons and other institutions where custodial or restricting freedom measures are enforced, such as forensic institutions or institutions for detention of aliens pending deportation. The inspection tasks include institutions for adults, children and juveniles in relation to criminal measures. The Council is also charged with the inspection of the probation service and care of victims.

The inspection of the police force and the Public Prosecution Service

In addition, the Council is charged with the inspection of the police force and the Public Prosecution Service. When it comes to the police force, the agreements in the Final Declaration focus exclusively on the judicial police force. However, it is preferred not to divide the inspection of the police force into the inspection of the judicial police force and that of the other tasks of the police force because these tasks cannot always be easily separated in practice. Furthermore, it is preferred that an organization only has to deal with one inspection service. In Curacao and St. Maarten the authority over the police force rests with the Minister of Justice and the procurator general (who functions under the responsibility of the minister of Justice), where the minister of Justice is the police force manager. In the Netherlands there is a shared responsibility of the Minister of the Interior and Kingdom Relations and the Minister of Justice.

In so far as the Council performs the inspection tasks with respect to the police force and the training of the police force on Bonaire, St. Eustatius and Saba, the division of responsibility between the Minister of the Interior and Kingdom Relations of the Netherlands and the Minister of Justice of the Netherlands is regulated in accordance with the European part of the Netherlands.

The inspection by the Council is restricted to general aspects. It is important to bear in mind here the specific position of the Public Prosecution Service in the countries. An extensive explanation of the position of the Public Prosecution Service can be found in the explanatory memorandum to the Bill regarding the Public Prosecution Services of Curacao, St. Maarten and of Bonaire, St. Eustatius and Saba. Here only the following need be stated. The Public Prosecution Service in the countries exercises its powers under the responsibility of the Ministers of Justice of the countries, but does take a special position in regard to these Ministers. This special position is mainly connected to the relation of the Public Prosecution Service to the court.

As is the case now, the Joint Court of Justice of the countries supervises the proper prosecution of punishable facts and may ex officio order prosecution. The Court reviews the Public Prosecution Service action in individual criminal proceedings during the hearing of that case. In that sense the Public Prosecution Service is therefore already being monitored.

Yet, there is a need in the new countries of an externally organized inspection of the quality of the Public Prosecution Service. The manner in which the Public Prosecution Service performs its tasks is of great importance to the safety of the public and their sense of safety and the public's trust in the Public Prosecution Service. To guarantee sufficient inspection, on the level of the responsible ministers, of the performance of tasks, the results and management of the Public Prosecution Service, and while retaining the necessary restraint by the minister of Justice himself, the task of the Council includes the Public Prosecution Service.

With the inspection of the Public Prosecution Service and the police force, the focus of the Council is on whether the policy is correctly translated into practice and whether the implementation is effective.

This mainly includes the extent in which the Public Prosecution Service implements the general prosecution policy as determined by each of the three countries separately. With the inspection of the quality of the cooperation of the Public Prosecution Services and police forces of the countries, consideration is being given to the cooperation by means of the mutual legal assistance and deployment of each others public prosecutors and police personnel in the prosecution and investigation of punishable acts.

The Council examines the effectiveness of the organizations, the quality of the performance of tasks and the management. Thus, the inspection explicitly does not relate to individual cases. One component of the quality of the performance of tasks is compliance with legislation and regulations as valid for the implementation of these tasks. Naturally, the international regulations that are applicable in the countries are included in the legislation and regulations. The applicable legislation and regulations may differ per country. It is therefore important that the Council and its secretariat are rooted in the three countries concerned. This is further discussed in paragraphs 4 and 5.

In the countries, the Council also monitors the quality of the police training. A qualitative good training is required for a qualitative good police force.

The inspection of the judicial cooperation between the countries

It has already been indicated in the introduction that various agreements on cooperation have been made in the field of justice. Examples of these are the cooperation between the three police forces, the cooperation in the fight against cross-border crime, the mutual exchange of detention capacity and the Coast Guard. The Council monitors the effectiveness and the quality of these forms of cooperation between the countries. The inspection of the Coast Guard by the Council is restricted to inspection of the judicial tasks of the Coast Guard, executed in the waters of Curacao, St. Maarten and Bonaire, St. Eustatius and Saba.

The supervision of the Coast Guard by the Council is based on Section 3, subsection 3 and exclusively relates to the effectiveness and the quality of the implementation of judicial tasks by the Coast Guard and not to the management.

Inspection reports by the Council regarding judicial cooperation may lead to early adjustment, termination or even to intensification of forms of cooperation. The reports may also play a role in the evaluation of the agreements in the Final Declaration, as agreed after five years.

Nature of the inspection

As has already been indicated above, the inspection tasks are general by nature. In other words, the Council is not involved in individual investigations or prosecution of punishable acts. As has been explained above, the monitoring of this is regulated in differently. The Council may, however, research a number of criminal proceedings to gain insight in a trend.

More in general, the inspection by the Council forms an addition to other forms of monitoring services and institutions in the chain of law enforcement and administration of justice. The services and institutions report on their actions by means of the annual reports and accounts. In addition, the governments of the countries execute their monitoring powers, whether or not challenged thereto by certain events or signals they may receive from various sides. Here, the Ombudsman or Ombudsman office in the countries may play an important role in issuing the alert. Also, judicial decisions or reports from international organizations may give a picture of the functioning of the law enforcement chain.

The Council adds to these mechanisms. The Council may arrange for good and independent information to come available about the quality of the law enforcement in Curacao and St. Maarten and on Bonaire, St. Eustatius and Saba in general. To know and recognize the factual situation is a requirement for a good directing by the responsible Ministers. Moreover, an expert inspection in the matter may contribute to the public trust in law enforcement. Thus, the inspection is not exclusively an instrument for the Ministers to live up to their responsibility, but it also fulfils a public function. Furthermore, the inspection by the Council offers the institutions and services concerned insight in the quality with which the tasks are performed, so that they may take up points for improvement.

The Council is here to signal and review. Adjusting policies and developing new policies or even possible intervention in the service or institution or reviewing cooperation agreements is reserved for the responsible ministers.

Complaint handling

Section 3, subsection 4, offers the countries the possibility to charge the Council by Act of Parliament with the advising on complaints regarding conducts by organizations inspected by the Council. In Curacao and St. Maarten, this task can be assigned by national ordinance, in the Netherlands by Act. This possible task of the Council concerns the advising on the so-called internal complaint handling, i.e. the handling of the complaint by the competent administrative authority, usually the Minister himself. If this possibility is selected, chapter 5 of the present Bill applies. Reference is also made to paragraph 8. By creating the possibility of advising on the handling of complaints by the Council, the agreement in the Final Declaration in the matter of complaint handling by the Council will be implemented.

4. Position of the Law Enforcement Council in the countries

Independent organization of the Council

In order to function properly it is important that the Law Enforcement Council must be able to carry out objective investigation of the facts and on that basis come to an assessment, for the responsible Minister or others, without being influenced by the organization to be inspected.

In particular, the substantive independence in relation to the Ministers of Justice (and if it concerns the Netherlands, the Minister of the Interior and Kingdom Relations for the monitoring of the police force and police training) deserves special attention. The factual assessment of the Council may not be influenced by political involvement. Therefore, it is regulated that a possible instruction by the Ministers may not relate to the methodology to be applied, the opinion forming of the Council and its investigation report (Section 4, subsection 2).

In addition, to guarantee the independence of the Council, the Council is authorized to determine (also) by itself which investigations it carries out, restrictive grounds for removal are included in the bill and reports from the Council are public as much as possible.

The independent position of the Council is further provided for by organizing the Council externally, meaning that the Council is not functionally placed with, for example, a ministry in one of the countries. The Council is an independent organization with its own

budget that is located in each of the participating countries.

Professionalism

A professional opinion forming by the inspector is necessary to contribute to the trust in the functioning of the public administration and for sufficient authority also in regard to those who are being inspected. This implies that the Council must have sufficient distance from the field. This is also a reason to assign the Council an independent position. Professionalism also implies that the members are exclusively appointed on the basis of their expertise. This is further discussed in the next paragraph.

Transparency

Professionalism and transparency must mainly be reflected in the factual actions of the Council. It is important that the Council explains what its actions. The legislative framework provides for sufficient basis hereto. The Council must draw up a protocol for its working procedure. Matters such as the notice of inspections, hearing procedures prior to an inspection report and the manner in which the Council publishes its reports are addressed in this protocol. The protocol is published on the website of the Council.

The regulation regarding disclosure and publication of other positions further contribute to transparency.

Finally, the provision may be noted in this regard that the reports from the Council as initiated by the Council are, in principle, public. This is further discussed in paragraph 7.

5. Composition of the Council

The Council consists of three members who are appointed by Royal Decree based of their expertise. This concerns expertise required for the performance of the tasks of the Council. It may be expertise relating to the execution of inspections and the reporting thereof, but it may also be expertise relating to the organization of institutions where punishments or measures are implemented, the judicial cooperation or the investigation and prosecution policy. It is desirable that the members of the Council have different expertises. Thus they will complement each other. It is mainly of importance that the Council is not a political body, but that it does have a feel for administrative relationships. By reporting to the Ministers with supporting arguments based on unbiased observations, the Council gains authority and confidence grows in the advice given by the Council. It is, therefore, important that already upon the appointment, but also afterwards, any other positions are taken into account. There must be confidence in the impartiality and independence of the members of the Council. Therefore, any other positions must be disclosed to the Ministers and published. Non-disclosure of any other positions may seriously disadvantage the confidence placed in a member of the Council and may be reason for suspension or removal.

The responsible Minister of each of the countries proposes to recommend one of the members. This is always done in accordance with the responsible Ministers of the other countries. The countries are jointly responsible that the composition of the Council is such that it may function properly. The members are, as agreed in the Final Declaration, appointed by Royal Decree. The decrees are drafted in the Council of Ministers of the Kingdom. The presidency will rotate among the members. They will take turns annually.

In view of the independent position of the Council, the bill provides for a full list of grounds for suspension and removal. A proposal for suspension and removal must

originate from the Ministers jointly. Each of the Ministers who thinks that a member is to be considered for suspension or removal while he cannot convince the other ministers thereof, has the option to raise or have the matter raised in the Council of Ministers of the Kingdom.

6. Support of the Council

The Council has a secretariat at its disposal for support. In all countries, the secretariat has a secretary at its disposal. The secretaries and the other members of the secretariat may be charged by the Council with inspection work. However, the Council may also make use of experts for that purpose. The bill stipulates that this includes in any case expert inspection services in the matter in the countries. It is prescribed that for inspections on Bonaire, St. Eustatius and Saba expert inspection services from the Netherlands must be used. The inspections are executed under the authority and responsibility of the Law Enforcement Council.

In practise it will remain to be seen what the optimum size must be of the secretariat.

The Council appoints, suspends and removes the secretaries and other members of the secretariat. The legal status regulations applicable in the country of the work location apply to the members of the secretariat, whereby the Council and not the Minister takes the individual decisions relating to the legal status of members of the secretariat. Therefore, the Council is the competent authority of the secretariat.

The members of the Council shall be jointly responsible for the decision making regarding appointment, suspension and removal and other legal status decisions. The members of the secretariat are only accountable to the Council. Not to any individual members of the Council, but to the body as such. Although the other members of the secretariat report to the secretary of their work location for the daily work, they also come under the authority of the Council as such. They are deployable in all countries.

This legal status of the secretaries and other personnel of the secretariat guarantees an independent position of the support of the Council.

7. Inspection by the Council

Powers and authority of the Council

The Council may conduct an investigation of its own accord and on the request of one of the Ministers of Justice or the Minister of the Interior and Kingdom Relations.

The inspection by the Council may only be effective if the Council has the power and authority that enable it to actually perform the assigned tasks. For this purpose, certain powers and authority are vested in the Council that are generally vested in supervisors. It concerns the authority to enter places, the power to claim information, inspect business documents and records, make copies of these documents and records, ask permission to inspect identification papers and search means of transport and the cargo of means of transport. The authority to enter places is restricted to the grounds and buildings of the organization to be inspected.

The Council may only make use of these power and authority in so far as it is reasonably considered necessary. This is a specific elaboration of the principle of proportionality. This means, among other things, that its power and authority may only be exercised when the nature of the provision which is inspected entails that the power and authority

must be exercised.

In this context, the Council may determine which members of the Council, personnel of the secretariat and experts of inspection services, may exercise these powers on behalf of the Council. Not every member of the secretariat or every expert to be employed will per definition have to have all powers. The starting point is that the power to be granted are proportional to the task to be performed and that they must be exercised in the least burdensome manner. If an official only requires a portion of the power and authority vested in the Council then that will be sufficient.

The power of the Council to search a vehicle or to move it to a designated place is restricted to means of transport for which the Council has an inspection task, such as police cars. The manner of stopping a vehicle is laid down in a set of regulations.

Also the authority of the Council to enter buildings is restricted. It concerns buildings of the organizations that fall under the general inspection task. The Council is not authorized to enter a residence. Neither does the Council have the authority to take samples. In view of the nature of the inspection by the Council, namely the inspection of organizations under public law, it may be assumed that there is no prompt need for this authority. In view of the fact that the starting point of the authority to be granted must be in proportion to the task to be performed, this authority has not been included in the bill.

Annual plan

The work of the Council shall be included in an annual plan, that must be approved by the responsible ministers. In the annual plan, it is indicated per country how many and which inspections are held. The plan may also indicate which experts will be involved in the inspection. The Council will reserve time in its work plan for unannounced inspections and will indicate to what extent unannounced inspections will be part of its working method. The Council may indicate in its work plan under which circumstances an unannounced inspection would be considered desirable in the interest of the investigation.

Reports by the Council

The Council shall make a report of each inspection in which a description will be given of the inspection investigation, the image arising from it, the opinion of the Council on the matter and any recommendations to take measures.

Before the Council issues a report, it first gives the authorities concerned and next the Minister the opportunity to respond to its findings. These responses may of course be reason to adjust the report, for example because the Council is notified of factual errors or because the Minister draws the attention to certain aspects. The response from the Minister in this stage may, in principle, not relate to the opinion by the Council.

After receipt of the final report, the Minister draws up a response and sends the report with his response to the parliament of the country concerned. In it, he will discuss the findings and recommendations of the Council. The report provides the parliament insight in the functioning of the law enforcement chain. It may provide basis to call the Minister to account.

The work of the Council mainly consists of investigating of and reporting about individual institutions and services and separate themes. Gradually, also a more general image emerges from it. Each year, the Council shall report on the status of the law enforcement in Curacao, St. Maarten en on Bonaire, St. Eustatius and Saba. This report offers the opportunity to present those findings of the Council in writing that go beyond the scope of

the separate inspections.

Informing the Parliaments and the Council of Ministers of the Kingdom

As indicated above, the Minister concerned sends the inspection report issued to him to the Parliament of his country respectively to the Lower House of the States General. He has this accompanied by his response.

The annual report on the status of the law enforcement in a country is sent by the Council directly to the Parliament or the Lower House of the States General.

In addition, the Council may, in certain circumstances, directly address the Parliament of Curacao or St. Maarten or the States General. This is relevant if a Minister systematically fails to follow recommendations of the Council. The contact with the Council may lead to the representative body holding the Minister to account. The Minister remains accountable for taking measures or not. The representative body needs to address the Minister in the matter. The Council may exclusively conduct an investigation, give an opinion and issue recommendations to the Minister. The authority to directly address the representative body functions as a deterrent for the responsible Ministers to follow up on the results of the inspection.

As agreed in the Final Declaration, the Council may also directly approach the Council of Ministers of the Kingdom in the event its recommendations are systematically not being followed. For the Council of Ministers of the Kingdom, this may be reason to bring the matter to the attention in the country concerned. Naturally, the starting point remains that each of the countries is responsible for proper law enforcement and that each of the countries takes the measures required to guarantee a proper level of law enforcement.

8. The possible role of the Council in the handling of complaints

It is laid down in the Final Declaration that the Council may play a role in the handling of complaints.

Because of the drastic nature of any contact between the public and, for example, the police, it may be desirable to involve an external authority to the handling of complaints about the police, even during the stage that the complaint still rests with the police itself. In the bill, the task of the Council regarding the handling of complaints is restricted to the internal right of complaint in which Curacao, St. Maarten and the Netherlands themselves assess whether it is desirable to involve the Council in the internal complaint handling. The countries may see for themselves what the relation of the Council is in regard to, for example, existing supervisory committees in prisons or specific regulations for the handling of complaints.

In the event use is being made of the opportunity to confer authority on the Council to advice about complaints, then certain rules apply to prevent the (small) Council having to deal with different rules applicable to the Council.

If the provisions of Section 3, subsection 3 are applied, the Council's task is to examine the complaint and report on it to the administrative body. Hearing the complainant and the one about whose conduct is complained form part of the examination by the Council. The report contains an advice, the report of the hearings and any recommendations. Departure from the advice is only possible if it contains reasons. The administrative body itself decides on settlement of a complaint. After that, depending on the regulations in the country concerned, the possibility may exist of complaint handling by a general, independent body to examine the complaints. (Ombudsman function)

9. Funding and management

The Council has legal personality of its own and its own administrative regime. The bill contains a number of provisions relating to the budget, the annual plan and the annual accounts. Thus it is guaranteed that the supervision on the management and operation satisfy the requirements of public access, disclosure and transparency. This enables the Ministers to account for it to the representative bodies.

The costs of the Council are met out of a contribution by the countries. In principle, the countries pay the costs of the inspection in their own country. They share the overhead costs. Starting point is that the Council only forms a capital by provisions and depreciations in so far as this suits a business economics management.

10. Evaluation

It is agreed in the Final Declaration that the new constitutional status shall be evaluated five years after the entry into force. This bill regarding the Law Enforcement Council relates directly to this new status. Therefore, the bill provides for an evaluation provision. The Parliaments of the three countries shall be involved in the evaluation.

The evaluation may give rise to an amendment of the Kingdom Act. The amendment shall take place in the same manner as the drafting of a kingdom act pursuant to Section 38, subsection 2 of the Charter. Meaning that the governments of the countries must reach a consensus on an amendment. An amendment is laid down in a bill to amend this Kingdom Act.

Section 43, subsection 2, provides for the possibility to terminate this Kingdom Act by common accord in as a result of the evaluation. If so decided thereto, termination may exclusively take place by repealing the Kingdom Act. If two of the three countries do wish to continue together then it is possible to amend the Kingdom Act thus that it only relates to those two countries.

II. EXPLANATORY NOTES ON INDIVIDUAL SECTIONS

Section 1

The definition of the term 'administrative body' in subsection 1, under a is such that each of the countries is able to understand this. Subsection 1, under e, f and g are definitions relating to the term 'Our Minister'. The reason for this is to state beyond a doubt when the Minister of Justice of Curacao, the Minister of Justice of St. Maarten or a Minister of the Netherlands are individually or jointly authorized. This is mainly of importance if it relate to the reports by the Council. In the event the Council has drawn up an inspection report, only the Minister of the country to which the report relates is authorized. In this connection the term 'Our Minister concerned' is defined in subsection 1 under f.

Under g, the term 'Our Ministers' is defined for those cases in which the Ministers jointly take a decision. In subsection 2 it is provided that the Ministers of Justice of the countries Curacao and St. Maarten together with the Minister of the Interior and Kingdom Relations are authorized in so far as it concerns the police force and the training of the police force. The Minister of the Interior and Kingdom Relations exercises that authority in accordance with the Minister of Justice of the Netherlands. The division of responsibility between the

Minister of the Interior and Kingdom Relations and the Minister of Justice of the Netherlands is herewith arranged as it is in the European part of the Netherlands.

In so far as it concerns the general control of the Council, the Minister of Justice of Curacao, the Minister of Justice of St. Maarten, the Minister of the Interior and Kingdom Relations and the Minister of Justice of the Netherlands are jointly authorized. Here it concerns mainly the approval of the annual plan and the budget (Section 36, subsection 5), the approval and adoption of the annual accounts (Section 37, subsection 5) and the evaluation report (Section 42).

In the event it concerns the inspection of the judicial cooperation, the prison system, the probation service and care of victims, immigration authorities and border control, then this belongs to the responsibility of the Minister of Justice of the Netherlands. This is expressed in Section 1, subsection 4. In all other cases, the term 'Our Minister of Justice of the Netherlands' is understood to mean the Minister of Justice of the Netherlands in accordance with the Minister of the Interior and Kingdom Relations. This mainly relates to decisions regarding suspension and removal of members of the Council (Section 10 and 11), the receipt of the report of the Council on the status of the law enforcement (Section 33, subsection 2), the decision to apportion the costs (Section 35, subsection 4), the giving of information regarding changes in expenditures (Section 37, subsection 1, second sentence) and the laying down of rules relating to the creation and volume of provisions (Section 38, subsection 4). With the exception of the report of the Council on the status of the law enforcement in a country, this relates to the tasks and work whereby the Minister of Justice of Curacao, the Minister of Justice of St. Maarten and the Minister of Justice of the Netherlands and the Minister of the Interior and Kingdom Relations are jointly involved.

Section 2

The Council is a joint body of Curacao, St. Maarten and the Netherlands. For mainly practical reasons the Council is given legal personality. Among other things, this offers the possibility to appoint members of the secretariat with the Council and not with one of the countries, which may be important in view of the independent performance of its public task. Moreover, it has its advantages in connection with the funding by the three countries. The Council is a legal entity under public law in each of the countries.

Section 3

The Council is charged with general inspection of the organizations mentioned in this Section that fulfil a role in the judicial chain, with the exception of the Joint Court of Justice as independent court.

Starting point is that the Council inspects all components of the judicial chain. For the sake of clarity, it is specified in Section 3 to which organizations the inspection task of the Council is related. The tasks of the Council include the judicial care of victims and the judicial youth care. The inspection of the civil youth care is not regulated in this bill, nor when civil youth care is offered in a judicial institution. The Council is charged with the general inspection of penal institutions for adults and youths, the probation service and care of victims. These organizations are also a component of the judicial chain and are therefore included in Section 3, subsection 1.

Subsection 1, under c, does offer the possibility to extend the inspection tasks of the Council in a country by national ordinance or by Act when a Minister of Justice of a country is responsible for an organization that is not mentioned in subsection 1, under a, or does not fall under the definition of subsection 1, under b. This possibility of extension is of importance for territories where the responsibilities of the Ministers in the respective

countries are defined differently from the responsibilities of other Ministers. Youth care is an example of this. The extension may only relate to organizations that are part of the judicial chain.

The quality and effectiveness of the judicial cooperation as mentioned in subsection 3 is understood to mean the cooperation between the three police forces, the cooperation in the fight against cross-border crime, the Coast Guard and the mutual exchange of detention capacity.

Subsection 4 offers a basis to charge the Council, by Acts of Parliament of the countries (national ordinance of Curacao or St. Maarten or Act of Parliament of the Netherlands), with advising on the handling of complaints about the conduct of organizations in individual cases. Each country decides by itself whether to make use of this possibility.

Police data are processed with organizations that are a component of the judicial chain. Subsection 5 offers the possibility to charge the Council with supervision on this processing. The advantage of this possibility is that the police force, by instruction of the Council, is not charged with an extra supervisor and that each of the countries may designate the same, already existing body as supervisor. If so required, the countries may grant extra powers to the Council that are necessary to fulfil the supervisory task properly.

Based on the Safety Investigation Board Kingdom Act, the Dutch Safety Board has the authority to conduct an investigation in connection with a fire, disaster or crisis. In Curacao and St. Maarten, the Safety Board may exclusively conduct an investigation into an incident on request. In the event an incident occurs on Bonaire, St. Eustatius or Saba, the Safety Board has independent authority to conduct an investigation. The investigation by the Safety Board may in practice also include the performance of tasks by organizations in the judicial chain, whenever these were in any way involved in the event to which the investigation relates, or its settlement. Since it is preferred that an organization only deals with one investigative body, the mutual relationship between the Council and the Safety Board is laid down in subsection 6. From this it follows that the Council shall not carry out an inspection, in so far as the Safety Board already conducts an investigation.

Section 4

In this Section, the Minister of Justice of Curacao, the Minister of Justice of St. Maarten and Our Minister of the Netherlands whom it may concern are jointly authorized to give an instruction. As an explanation, it may be noted that in the event the instruction relates to the police force or the training of the police force, the instruction is jointly given by the Minister of Justice of St. Maarten, the Minister of Justice of Curacao, and pursuant to Section 1, subsection 2, on the part of the Netherlands by the Minister of the Interior and Kingdom Relations of the Netherlands in accordance with the Minister of Justice of the Netherlands. Save in exceptional cases, this Section provides for intervention. An instruction may exclusively relate to the implementation of the annual plan. In general, holding consultations will be sufficient. Moreover, it is prescribed that an instruction is only given after consultations with the Council. An instruction is an extreme means that is hardly used in administrative practice. In order to guarantee the independence of the Council, it is explicitly provided that an instruction may relate to the applied methodology, the opinion forming or the inspection report.

Section 5, 6 and 7

The Council consists of three members that are appointed by Royal Decree for a period

of four years and may only be reappointed once. It is not prescribed in which order an appointment or reappointment must take place. This may, in time, have the effect of causing the entire Council to step down at once. To guarantee continuity, the Council of Ministers of the Kingdom may decide that one of the members is recommended for appointment for a shorter period than four years so that the continuity is provided for in case of a new appointment.

In joint consultation, members with a different background and expertise may be appointed.

Section 8

In Section 8 requirements are set to the persons who may be eligible for appointment as member of the Council. It must concern persons having a certain expertise in the area of the tasks of the Council (subsection 1), who have the Dutch nationality (subsection 2), who do not fulfil positions that are undesirable in view of the performance of one's tasks, the impartiality or trust in therein (subsection 3). In order to be able to continue to meet the requirements of the subsection 3, it is necessary to provide to some extent for testability of the performance of other positions. Other positions must therefore be disclosed (subsection 4). Whenever an other position is not disclosed this may be reason for suspension based on Section 11, subsection 2, or removal based on Section 10, under h. The specification of the disclosed other positions is available for inspection with the Council.

Section 9

Section 9 expresses the equality of the three members and the cooperating countries and guarantees that the presidency takes turns among the countries in accordance with the agreements of the Final Declaration. The president in force does not have any special tasks compared to the other two members. The members may decide on their own on a mutual distribution of tasks.

Section 10

This Section contains a number of customary grounds for removal of members of independent bodies. The statutory retirement age of seventy years of age is chosen because it may be desirable to make use of the experience of older persons. The relative independence of the Council is guaranteed by a limited number of grounds for removal that prevent removal for improper reasons. The provisions under h deserve special attention. Pursuant to this part, a member may be removed if, in the opinion of Our Minister, his acts or omissions seriously harm the trust placed in him. This serious harm does not have to lie with the manner in which the powers and tasks of the Council with regard to inspection and advice are performed. The trust may also be harmed by acts that in themselves are a separate matter from the Council but have as a result that the acts of the Council may not any longer be considered impartial or inspiring confidence. These include increases over the norm that do not constitute a crime as referred to under e of this Section or ways of conduct in the private sphere such as gambling debts that may be cause to doubt the integrity of the person. Therefore, a manner of acting is expected from the members of the Council that will be able to stand the test of criticism.

Section 11 and 12

Section 11 contains a number of customary grounds for suspension that are in accordance with the grounds for removal as included in Section 10. Section 12 provides for the manner in which a motion for suspension or removal is carried out.

Motions for suspension or removal of members of the Council are taken jointly.

Section 13

The legal status of the members of the Council are provided for by subordinate legislation. Section 13 offers the possibility to suffice in an order by council for the kingdom with the main features of a legal status regulations (provisions for remunerations, travel and subsistence allowance and any bonuses). Subordinate legislation may also provide for a level of remuneration for each of the countries that is suitable for the country concerned. Harmonization between the countries in this matter is obvious. The starting point here is that uniformity is pursued. The order by council for the kingdom may provide for the necessary flexibility, by the possibility of delegation to subordinate legislation.

Section 15

The members of the secretariat are appointed by the Council. Their legal status is, dependent upon their work location, equal to the legal status of officials in the countries Curacao or St. Maarten or as valid for government officials appointed to exclusively perform work for Bonaire, St. Eustatius or Saba. The rules as prescribed by the countries for their officials apply equally to the members of the secretariat that have their work location there. The rules are implemented by the Council. In so far as the legal status regulations contain an authority to lay down rules, the Minister of the country concerned remains authorized.

Section 16

The Council lays down its working procedure in a protocol, in which matters such as the notice of inspections and hearing procedures, that precede the adoption of an inspection report, are regulated. This protocol contributes to the transparency of the Council. It is published on the website of the Council and in a commonly available national gazette in the countries.

Section 17

The term '[without a] mandate' in subsection 1 expresses the fact that a member of the Council serves in the Council without being accountable as individual member or person to a country. The members of the Council are jointly responsible for the functioning of the Council and are jointly accountable for it.

Subsection 2 contains regulations to avoid the appearance of a conflict of interest. Any forms or representation in or advising on disputes or agreements at law or otherwise, in which the Council is involved, are in conflict with the position of membership of the Council as inspection of law enforcement. In addition, a member of the Council or the secretariat is not allowed to, indirectly or directly, enter into an agreement with the Council. It must be taken into account here that a gift from the Council is considered to be a unilateral agreement and therewith an agreement is entered into as referred to in subsection 2, under b. Naturally, it is allowed to enter into agreements in the capacity of member of the Council or employee of the secretariat in relation to the position to be exercised, such as entering into a loan for use agreement for equipment to be able to work from home.

Section 18 and 19

These Sections provide for some rules about the working methods of the Council.

Section 18 provides for the authority of the Council to involve experts. To the extent in which the inspection relates to organizations, that also work for the islands of Bonaire, St. Eustatius or Saba, the Council makes use of inspection services from the Netherlands (Section 18, subsection 2).

Section 21 through 29

These Section contain the powers and authority of the Council and some prescriptions about the use of these powers.

Both in the event the Council conducts an investigation on its own initiative and in the event the Council does so on request (Section 21), the Council only makes use of the powers vested in it in so far as this is reasonably required (Section 22). In the instruction by the Council it shall be stated which person shall have which powers and authority. (Section 29, subsection 1, first sentence, second part). The identification papers of the person concerned shall state which powers are vested in this person (Section 29, subsection 1, second sentence). This may be a short text, for example: The inspector has the power(s) and authority, as stated in Section(s) ... of the Kingdom Act regarding the Law Enforcement.

In so far as the Council makes use of experts of inspection services of the countries, in the exercise of their powers and authority these experts act under the responsibility of the Council (Section 29, subsection 3). Employees of the secretariat of the Council act per definition under the responsibility of the Council.

Sections 23 through 28 are formed in such a manner that powers can easily and unequivocally be granted by the Council by a reference in the text of the instruction and on the identification papers to sections or subsections of that Section.

This does not mean that an official always has to show his identification papers in order to be authorized. The identification papers only need to be presented upon request (Section 23, subsection 3).

The term 'documents and records' in Section 26 also include digital data and carriers of digital data. The authority of the Council to inspect is therefore not restricted to tangible documents in writing or print. This is also valid when the Council conducts an investigation that requires identification of the load of a vehicle and, if so required, to takes this along. This load may, among other things, consist of administrative documents in the form of digital records on digital media and form a part of the administration of the organization under investigation.

In Section 27, subsection 1, it is provided that the Council is authorized to search vehicles. In addition, it is provided that the Council is authorized to search the load of a vehicle whenever goods are transported that in its reasonable opinion must be inspected. With this authority the Council is able to assess the maintenance of the vehicles of the bodies to be inspected and examine whether the vehicles contain any load such as digital data carriers with information of the body to be inspected. Furthermore, Section 27, subsection 3, provides that the Council may demand inspection of the documents prescribed by law. With this, the Council has the authority to ask drivers of the vehicles for their driving licence and other records, so it can be checked whether the driver is entitled to drive the vehicle and whether the vehicle is maintained according to the requirements as valid in the countries.

The Council further has the authority to demand that a vehicle or vessel is stopped and moved to a designated area.

The manner in which this is demanded is laid down by regulations by the Council (Section 27, subsection 4 and 5). The demand to stop is necessary in order to be able to

make use of the authority to search the vehicle or its load. The manner in which the Council stops a vehicle is laid down by regulations.

Section 30 through 32

The report of the Council is concluded independently from the Minister concerned. It is mandatory, however, as laid down in Section 30, subsection 2, that first the body concerned and next the Minister concerned is asked to respond before the inspection report is finalized. Any misunderstanding can be corrected with a first response from the body concerned.

If the body concerned fails to respond within the prescribed time limit, the inspection report is sent to the Minister concerned. If the Minister concerned fails to respond within the prescribed time limit, the report is finalized (Section 30, subsection 3). In addition, the Council may make a recommendation in its inspection report in regard to the measures to be taken. It is not the intention that the right to make a recommendation leads to a general advice. The issue at hand is that the facts as established by the Council lead, supported by reasons, to a recommendation about the measures to be taken. This is even more so of importance since the Council, pursuant to Section 32 has the authority to notify the representative body and the Council of Ministers of the Kingdom if a Minister concerned consistently fails to follow the recommendations of the Council, in accordance with the agreements of the Final Declaration. In this connection, it is important that the recommendations are sufficiently concrete and verifiable.

As finishing touch of the regulations regarding the reporting of the Council, the inspection report shall be public, pursuant to Section 31. The report, or parts thereof, are only then not public in the event one of the exceptions as referred to in Section 31, subsection 2 occurs or the importance of publication does not outweigh the interests as mentioned in Section 31, subsection 3. Such an interest may occur when the investigative methods of the Council or other administrative bodies, such as the Ministers in the countries, would be made known as a result of the publication. The grounds for exception are taken from the publication regulations in the countries.

Section 33

Each year, the Council shall publish a separate report about each country regarding the status of law enforcement. The report is offered to the Minister and the representative body.

Section 34

This Section provides for the manner in which the Council reaches an advice in individual complaints if it is declared competent by national ordinance or Act. Before the Council formulates an advice, the complainant and the administrative body to whose conducts the complaint relates, are heard.

Only in the event that the complainant and the administrative body do not wish to be heard or if the complaint is obviously unfounded, the Council may decide not to go through with a hearing. A complaint will only be considered to be obviously unfounded when this is clearly apparent from the facts. This may, therefore, not be easily assumed. It is not regulated how the Council hears the complainant. The Council itself may carry this out in any manner provided that the reasonable interests of the complainant are always considered. Subsection 6 provides that an administrative body that receives an advice from the Council must explain its reason for a conclusion that departs from the

advice.

Section 35 and 36

The countries pay the costs of the Council (Section 35, subsection 1). The Ministers jointly determine the total amount of the costs (subsection 2) and the division of the costs for general support (subsection 4). The costs made for inspection and advice in one of the countries are met by that country (subsection 3). It is obvious to divide the costs for general support, such as housing costs and costs for secretarial support, among the countries in proportion to the costs made for advice and inspection. Representation expenses, cost of meetings and costs made for compensation of the members of the Council may be divided equally.

For the division, the Council may make a motion upon presenting the budget and annual plan before 1 October of each year (Section 36, subsection 1). The budget and annual plan namely contain a split-up of the activities per country (Section 36, subsection 3). The Ministers take into account the distinction made in Section 35, subsection 3 and 4, between the costs made specifically for the inspection and advice in a certain country (subsection 3) and the costs for general support of the secretariat (subsection 4) when determining the division.

It is important to be able to mutually compare the budgets and accounts and that insight may be obtained in developments throughout the years. Therefore, it is explicitly prescribed in Section 36, subsection 4 that each new budget shall include a comparison to the previous budget and the latest annual accounts.

The decision to adopt the budget requires the approval of the Ministers (Section 36, subsection 5). The approval of the Ministers are for the purpose that they assume political responsibility that the execution of the legal tasks of the Council largely correspond with the estimated costs of the budget annual plan.

Section 37

Subsection 1 of this Section makes it mandatory to report any considerable differences between actual expenses and income (in this case the contributions from the countries) and estimated expenses and income. The Council and the Ministers may give the criterium 'considerable' a more specific content in the annual plan.

It is included in subsection 5 that the annual accounts require the approval of the Ministers. Denying approval of the annual accounts will, among other things, be at issue whenever there is uncertainty about the management or whether the management is incorrect or incomplete and requires adjustment.

Section 38

The Council is a legal entity and may maintain a reserve. For all reserves, rules may be set in relation to the creation and size (subsection 4). Consideration is being given to normal economically sound reservations for specific expenditures.

At the end of a budget year, an equalization reserve offers the possibility to add or withdraw financial means in the form of an operating balance to the equalization reserve. By the creation of the equalization reserve, the balance of previous years can be 'carried over' to the future. In principle, this is a restriction of the budget right of the representative bodies. For that reason, the equalization reserve is provided for by law. For subsequent

budgets, the equalization reserve serves as means of security (or as a deficit from the past) and it plays a role in determining the contributions from the countries in the next year. The equalization reserve shall always need to be made visible in the annual accounts. Based on subsection 4, rules may be set for the creation and size of the equalization reserve by ministerial national scheme.

Section 39

In view of the relatively small amount of activities of the Council in terms of finances, equipment and personnel, it will not be necessary to bind the Council to stringent conditions in regard to the authority to perform legal acts under private law. The approval of the budget and annual plan provide for sufficient supervision.

Section 40 and 41

Section 40 regulates the audit report and Section 41 regulates the supervision by the Courts of Audit of the countries on the management by the Council. The Council shall appoint the auditor (Section 40, subsection 1). It is desirable that the auditor of the Council, the auditors of the countries and the Courts of Audit hold consultations about the manner of execution of financial supervision. The Council shall demand its auditor to offer the Ministers insight into the work of the auditor. The reason for this is that the Ministers must be able to assess, by studying the records of the Council's auditor, whether the auditor had indeed been able to reach his opinion on the basis of those records.

Subsection 3 and 4 of Section 40 indicate that the audit report shall relate to the lawfulness and effectiveness. The Courts of Audit in the countries are authorized to supervise this and shall hold consultations (Section 41).

Section 43

This Section offers the possibility to amend the present Kingdom Act by common accord or, if the evaluation regulated in Section 42 gives rise thereto, to terminate it. Amendment and termination of the Kingdom Act must be done, since this is not provided for in any other procedure, in the manner in which the bill came into being. Amendment and termination therefore take place by Kingdom Act and requires common accord.

The Minister of Justice,

E. M. H. Hirsch Ballin

The Minister of the Interior and Kingdom Relations,

G. ter Horst

The State Secretary of the Interior and Kingdom Relations

A. Th. B. Bijleveld-Schouten