
National Ordinance of the
amending the National Ordinance
Duty to Report Cross-Border Cash Transports in
response to Recommendations 32 and 33 of the
Financial Action Task Force

IN THE NAME OF THE KING!

THE GOVERNOR of Sint Maarten,

Having taken into consideration:

that it is desirable to amend the National Ordinance Duty to Report Cross-Border Cash Transports in order to comply with Recommendations 32 and 33 of the Financial Action Task Force;

Having heard the Council of Advice, and in consultation with Parliament, has adopted the national ordinance below:

Article I

The National Ordinance Duty to Report Cross-Border Cash Transports is amended as follows:

A

The words "Duty to Notify", "Notification", "notification", "notifications", "notifier" and the verb "to notify" are replaced in each instance by the words "Duty to Report", "Report", "report", "reports", "reporter" and the verb "to report".

B

Article 1 is amended as follows:

1. Part c will read:

c. money: domestic and foreign bank notes, coins and government notes that are in circulation as a medium of exchange as well as bearer negotiable instruments;

2. By replacing the full stop by a semi-colon at the end of part d, three parts are to be added to article 1, reading:

e. precious metals: non-rusting metals, including gold and silver;

f. item of jewellery: object of precious metal, mounted precious stone, containing pearl or other properties, used for the purpose of adornment;

g. other objects: transmittable rare movable items representing a generally accepted high value.

C

Article 2 is amended as follows:

1. In paragraph 1, "ANG 20,000" will be replaced in each instance by: ANG 25,000.

2. In paragraph 2, "a declaration signed by the notifier" will be replaced by: a declaration form signed by the reporter.

3. Paragraph 3 will read:

3. If the transportation of money, precious metals, jewellery or other objects is undertaken by a professional transport operator that is nevertheless not enabled to make the report referred to in paragraph 1, the report shall be made to the Inspector of the Customs Administration by the sender of the money, the precious metals, jewellery or other objects by no later than the time of actual entry or exit of the money, the precious metals, jewellery or other objects.

4. A paragraph 8 will be added, reading:

8. The Minister shall make the form referred to in paragraph 2 available in paper and digital format and shall make it possible for a report as referred to in paragraph 2 or 3 to be made electronically.

D

In article 2, paragraph 1, article 4, paragraph 2, part b, and article 5, paragraph 2, part e, the word "money" will be replaced in each instance by "money, precious metals, jewellery or other objects".

E

In article 2, paragraphs 5 and 6, article 5, paragraph 1, and article 8, paragraph 3, the designation "Immigration and Naturalisation Service" will be replaced in each instance by: Immigration and Border Control Authority.

F

In article 2, paragraph 7, article 3, parts a, b and c, and article 5, paragraph 3, the words "the money" will be replaced in each instance by "the money, precious metals, jewellery or other objects".

G

The opening sentence of article 3 will read:

In the event of a report as referred to in article 2, paragraph 2, accurate information will be provided regarding:

H

Article 4 will read:

Article 4

1. The Financial Intelligence Unit shall manage the data obtained pursuant to article 3.
2. The officials referred to in article 5, paragraph 1, shall forward without delay to the Financial Intelligence Unit:
 - a. the reports referred to in article 2;
 - b. copies of official reports of detention or seizure of money, precious metals, jewellery or other objects;
 - c. copies of official reports concerning a settlement as referred to in article 10; and
 - d. every suspicion of money laundering or terrorist financing.
3. The officials referred to in article 5, paragraph 1, shall report the business information recorded in an official report as referred to in paragraph 2, under b and c, and the business information concerning a suspicion of money laundering or terrorist financing electronically to the Financial Intelligence Unit.
4. The Financial Intelligence Unit shall publish a reporting code and interpretive note for reports as referred to in paragraph 3 on the FIU's website.

I

Article 5 is amended as follows:

1. In paragraph 2, under e, after "to be detained" will be inserted: and to be seized where there is suspicion of a breach of this National Ordinance, of money laundering as referred to in Title XXXI, or of terrorist financing as referred to in article 2:55 of the Criminal Code.

2. A paragraph 10 will be added, reading:

10. The Minister shall publish statistics before 1 April each year for the previous calendar year regarding:

- a. the reports and official reports passed on to the Financial Intelligence Unit;
- b. other reports pursuant to this National Ordinance;
- c. false reports and declarations received in the context of the enforcement of this National Ordinance;
- d. criminal investigations pursuant to this National Ordinance; and
- e. international customs cooperation in the implementation of the legislation for the prevention and combatting of money laundering and terrorist financing.

J

Article 6, paragraph 3 will read:

3. In a ministerial regulation rules may be laid down, concerning the requirements which the civil servants referred to in paragraph 1 must satisfy.

K

Article 7 is amended as follows:

1. In paragraph 1, "fine of at most five hundred thousand guilders" will be replaced by: a fine of the sixth category.

2. In paragraph 2, "a fine of at most two hundred and fifty thousand guilders" will be replaced by: a fine of the sixth category, and the word "mentioned" will be replaced by: referred to.

L

Article 9 is amended as follows:

1. In paragraph 2, "further regulations will be prescribed" will be replaced by: further rules may be laid down.

2. A paragraph 3 will be added, reading:

3. In a national decree, containing general measures, the amount referred to in article 2, paragraph 1 may be amended.

M

Article 10 is to be renumbered as article 11, and a new article 10 will be inserted, reading:

Article 10

1. By way of derogation from articles 141 and 142 of the Code of Criminal Procedure, the public prosecutor or a public official of the Customs Administration or the Immigration and Border Control Authority authorised by him/her may, until the date on which the summons is issued, enter into a written settlement with a person who has acted in breach of the provisions of articles 2 and 3 for the payment of a monetary amount to avoid criminal prosecution for breach of this National Ordinance as well as to avoid criminal prosecution for money laundering or for terrorist financing, as referred to in the Criminal Code, provided that the person has stated in writing that he/she will surrender the money, the precious metals, jewellery or other objects that he/she failed to disclose or incorrectly disclosed.
2. Article 150a of the Code of Criminal Procedure shall apply analogously.
3. The settlement shall constitute entitlement to enforcement, which enforcement may be executed subject to the regulations set forth in the Code of Civil Procedure. Enforcement shall take place on behalf of the public prosecutor stating only his/her official capacity, without also giving his/her name.
4. By way of derogation from article 142, paragraph 5 of the Code of Criminal Procedure, the following shall be paid into the fund referred to in article 2 of the National Ordinance Fund for Combatting Crime:
 - a. the monetary amount referred to in paragraph 1; and
 - b. the money and the proceeds from the sale of the precious metals, jewellery and other objects:
 1. that were surrendered by the person who acted in breach of the provisions in articles 2 and 3;
 2. that were seized due to such action in breach of this National Ordinance, whether or not as deprivation of unlawfully obtained gains; or
 3. in respect of which a settlement was entered into.

N

Article 11 (new) will read:

Article 11

This National Ordinance shall be entitled: National Ordinance Reporting Cross-Border Cash Transports.

Article II

In article 217, paragraph 1, and article 218, paragraph 1, of the National Ordinance Import, Export and Transit, in each instance after "in this National Ordinance" the following will be inserted: , the National Ordinance Reporting Cross-Border Cash Transports or the Sanctions National Ordinance,.

Article III

This National Ordinance shall come into force at a time to be established by national decree; this time could differ for various sections or parts of the national ordinance.

This National Ordinance shall be published, along with the Explanatory Memorandum, in the Official Publication.

Issued in Philipsburg,
The Governor of Sint Maarten

The Minister of Justice
dated