



> Return address PO Box 20011 2500 EA The Hague

Aan de Voorzitter van de Tweede Kamer der Staten-
Generaal
Postbus 20018
2500 EA DEN HAAG

Directorate-General for
Kingdom Relations
Ministry of the Interior and
Kingdom Relations

Turfmarkt 147
PO Box 20011
2500 EA The Hague

Reference
2020-0000531652

Your reference

Date

Re. Stand van zaken derde tranche liquiditeitssteun aan Aruba,
Curaçao en Sint Maarten en concept-Rijkswet Caribische
Hervormingsentiteit

This letter is my response to three requests made to me by the standing committee for Kingdom Relations. Firstly, the request to inform the Parliament of the current state of affairs with regard to the draft Kingdom Act on the Caribbean Reform Entity (reference 2020Z15160/2020D33333). In this letter, I will also answer the Parliamentary questions from members Diertens (D66) and Kuiken (PvdA), thus meeting a second request from the standing committee for Kingdom Relations (reference 35420-96/2020D33337). In addition, I take this opportunity to inform the Parliament by means of this letter about the current state of affairs per country, and will also provide the Parliament with a brief travel report of my visit to Curaçao and Bonaire. I cannot meet the third request of the Parliamentary Committee, namely to share advice from the Board of Financial Supervision Curaçao and St. Maarten (Cft) with the Parliament (reference 35420-99/2020D33340). The recommendations of the C(A)ft serve to support deliberation in the Council of Ministers of the Kingdom of the Netherlands (RMR) and are subject to confidentiality. In my letter of 10 of July 2020 (ref. 2020-0000418140), in which I informed you about the results of the discussions in the RMR of 10 of July, I sent you these recommendations as an exception, because the nature and circumstances of the deliberation in the Council of Ministers of the Kingdom at that time required publication of the recommendations of the C(A)ft. That is not the case now.

State of affairs draft Kingdom Act on the Caribbean Reform Entity
I would like to inform you about the current state of affairs regarding the draft Kingdom Act on the Caribbean Reform Entity. In this update I will also answer the questions from members Diertens (D66) and Kuiken (PvdA) about conditions for emergency assistance and the letter to the KR Parliamentary Committee (11 August 2020) about the draft consensus Kingdom Act on rules on the establishment of the Caribbean Reform Entity (CHE) in Aruba, Curaçao and St. Maarten (2020Z15229).

Constitutional impact of the proposed Kingdom Act on Aruba, Curaçao and St. Maarten

Recently, concerns have been expressed from various sides about the constitutional impact of the legislative proposal for the Kingdom Act on the

countries. Questions have been raised in news comments, advice from the Advisory Councils and by this Parliament about the proportionality of the proposal and the extent to which this relates to the local democracy and autonomy guaranteed by the Statute. I did anticipate these concerns and questions. The regulation contained in the legislative proposal is evidence of an unorthodox approach in several respects. The government has always been well aware of this when drawing up the proposal. However, it was also clear to all concerned, that the well-trodden paths of cooperation and assistance, are inadequate to meet the enormous challenge now facing the Caribbean countries, as a result of a combination of negligent governance since 10/10/10 and the Corona crisis. This challenge requires a solid legal foundation as soon as possible, which on the one hand offers future prospects for the populations of Aruba, Curaçao and St. Maarten and, on the other hand, gives the Netherlands confidence in the successful use of the financial support provided.

'Unorthodox' does not mean that the proposal transgresses constitutional boundaries. The Statute for the Kingdom leaves the countries a great deal of room, both procedurally and materially, in drawing up regulations to address cross-national issues. That room is used in this proposal. The Netherlands requests the Caribbean countries to agree to the establishment of a Dutch non-departmental public body that supports and monitors them, independently of the Dutch government, without taking over formal powers vested in the bodies of the countries. This also applies to the Parliament's right to approve and amend budgetary policy. This will remain intact after the Kingdom Act is enacted, just like other parliamentary rights in the area of administration and regulations. If, for whatever reason, the Parliament of a country is not willing to agree to a particular reform or to finance it from their own budget, they can block it. The consequence of this may be that the entity or the Dutch government will stop providing financial support in whole or in part. That would not be a restriction of the Caribbean democracy, but rather is related to the presence of a democratic system on the Dutch side.

In the government's view, the establishment of the Caribbean Reform Entity does not constitute a violation of the autonomy of Aruba, Curaçao and St. Maarten. Autonomy is a concept with a broad meaning. It includes the above-mentioned principle of democracy but it also means that the countries themselves look after their own affairs. The countries cannot carry their autonomy now. The Netherlands wants to help the countries to fully carry this autonomy again. The entity will deal with these matters when the Kingdom Act enters into force which could give the impression that the Kingdom Act violates the autonomy of the countries. However, that is not the case. It is not uncommon for a consensus Kingdom Act to allocate tasks to bodies other than national ones. For example, the Kingdom Act on Financial Supervision, in which the Cft and the Government of the Kingdom are granted powers with regard to Curaçao and St. Maarten in the field of financial governance, a national affair. This limits the autonomy of these countries in this area, but does not violate it. That is an essential distinction.

In the case of the proposal for the Kingdom Act on the Caribbean Reform Entity, it should be borne in mind that the act has an explicitly temporary character. It will

automatically lapse six years after its entry into force, unless countries choose to extend the scheme by mutual agreement. In doing so, the proposal responds to another important legal principle: that of proportionality. A restriction of the autonomy of a country within the Kingdom must be proportionate to the goal it pursues. According to the Dutch government, the Caribbean countries cannot overcome the current crisis and its underlying phenomena without a long-term, joint effort, which has a tight and layered framework at the front and in which the Netherlands actively participates. This effort takes time, but it must also have a clear horizon. After all, the aim of this entire undertaking is that by the year 2027 Aruba, Curaçao and St. Maarten will have laid a foundation on which their constitutional autonomy can flourish optimally.

Meaning of consensus requirement and advice of the Council of State of the Kingdom

In the questions that the Parliament has put to me, I can also inform you of what, in my opinion, is the content of the consensus requirement that is necessary for a Kingdom Act under Article 38 Statute, in view of the principles discussed above. In this context, I would like to refer to my answers to the questions that I sent to the Parliament on 27 of August (reference 2020Z13853). In these I explained that the Statute does not prescribe any special process or protocol to be followed by consensus kingdom law, except that the countries participating in such legislation must consent to it. Ideally, the development of a proposal - as has happened in the past - is preceded by an extensive joint drafting and negotiation process. However, there was no time to do that in this case. In addition, the aim in the draft phase was not to directly come up with a jointly supported product. The aim was to design a legal construction with which - taking past experience into account - the necessary reforms and investments can be carried out in an effective and responsible manner. Ultimately, that should be the goal.

Article 38(2) of the Statute is the means to reach this goal. Of course, it is true that the countries cannot be forced to commit themselves to the proposal against their will. This consent requirement can manifest itself at different points in the legislative process. Agreeing to the decision to send the proposal to the Council of State of the Kingdom for advice now does not mean that the countries are bound by it. That is why I do not see much in the suggestion to ask the Council of State of the Kingdom for information prior to this decision-making. This causes additional delay and does not necessarily add anything to the regular consultation process. After the Council of State of the Kingdom issues its advice, a new timepoint has arrived when there must be consensus; namely when drawing up the further report. To ensure that the Council reflects on certain questions regarding the proposal, I agree with the Parliament that it may help to incorporate these questions into the request for advice. I had already decided to do this following discussions about the proposal with one of the countries.

In view of the urgent situation in the countries, it goes without saying that I am prepared to submit the advice of the Council of State of the Kingdom on the proposal to the Council of Ministers of the Kingdom as soon as possible after receiving it. As stated, however, a further report will first have to be drawn up in consultation with the participating countries.

Nature and objectives of the support provided

I share the view that on some fronts the need is so great that immediate aid cannot be delayed. That is why the cabinet has now released approximately 41 million euros for food aid to the Caribbean countries. This aid is provided directly and unconditionally to the most vulnerable residents through the efforts of the Red Cross and local aid organisations. Support is also provided in the medical field. The number of Covid-19 infections is increasing rapidly in the Caribbean parts of the Kingdom and is a cause for concern on some islands, while the Ministry of Health, Welfare and Sport is providing assistance and constantly monitoring the situation. The assistance varies per island, but focuses on strengthening Covid-19 care by: deploying additional IC staff, providing personal protective equipment (PPE), testing capacity, strengthening public health services to carry out, among other things, tracking and tracing.

I do not share the view that the conditions attached to liquidity support would lead to greater social and economic inequality in the Kingdom. The reforms aim to remove this inequality and to provide a social and economic impulse. In addition, these reforms must ensure that countries can really bear their own autonomy. Obviously, when working out the country packages, careful consideration will have to be given to the coherence and sequence of the aforementioned reforms. This will be reflected in the implementation agendas and action plans, which will be drawn up together with the Caribbean countries. There will be room for customisation per country.

The Kingdom Act offers possibilities to provide targeted support for the reforms in the land packages through projects, investments or otherwise. This may also include initiatives designed to stimulate economic activity. There is currently no provision for the setting up of a specific Guarantee Company Financing scheme (GO scheme) for the countries, as is currently available for the BES islands. The usefulness and necessity of such a scheme can be further explored in the broader context of necessary reforms and investments in the economic field.

This Parliament has inquired about the willingness to establish a certain percentage of the budget support as a donation. First of all, it is important that the most vulnerable are not left out in the cold. The Netherlands provides the necessary humanitarian aid unconditionally and in the form of a gift. In addition, it is important that countries are financially supported so that they can continue to meet their obligations, while at the same time reforming their economies and collecting taxes, so that a sustainable effect can be generated and the countries become more resilient. Only then can it be seen what the effects of this are on the debt positions of the countries.

Relationship between the Caribbean Reform Entity and C(A)ft

Finally, it has been asked what the relationship between the Caribbean Reform Entity and the C(A)ft will be. Would it not be advisable to transfer the intended tasks of the entity to the C(A)ft by means of an amendment to the Kingdom Act on Financial Supervision and the Aruba Financial Supervision National Ordinance? I must answer that last question in the negative. The bill provides for a varied and

comprehensive range of tasks. The C(A)ft is not equipped for this and, more importantly, it could hinder the proper performance of its already existing tasks. This does not alter the fact that the C(A)ft plays an important role within the system that is being set up with the proposal, for example in the provision of information about the financial position of the countries. The proposal also allocates new powers to C(A)ft, in particular the exercise of stricter financial supervision, should the entity advise the Council of Ministers of the Kingdom to this end. Good cooperation between the entity and the C(A)ft is therefore of obvious importance. In order to facilitate this cooperation, the proposal obliges both authorities to conclude a cooperation protocol.

State of affairs Aruba

On 10 of July 2020, the three Caribbean countries of the Kingdom did not agree with the proposal presented in the Council of Ministers of the Kingdom. Aruba was the only country that announced the same day through Prime Minister Wever-Croes that on the basis of this proposal it wanted to enter into talks with the Netherlands, focused on reaching consensus in the short term. Subsequently, intensive official contact was initiated about the conditions of the consensus Kingdom Act, the statutory basis of financial supervision and the national package aimed at Aruba. During this process I have been in regular contact with Prime Minister Wever-Croes. Despite efforts on both sides of the ocean, these consultations, although at an advanced stage, are still ongoing. It is therefore not possible for me to inform the Parliament in detail at this time.

State of affairs St. Maarten

In the months after the Council of Ministers of the Kingdom on 10 of July 2020, there was no response from St. Maarten showing that there is political support for this proposal. St. Maarten did, however, make a counter-proposal to the proposed Consensus Kingdom Act, which was discussed during the Council of Ministers of the Kingdom on 14 of August. The starting point, however, remains the package as presented during the Council of Ministers on 10 of July of this year. This is a well-considered package, which has come about with the involvement of various Dutch departments, and as long as St. Maarten does not agree with the essence of this package, a fruitful conversation will not be possible. In addition, during the Council of Ministers on 14 of August it appeared that the Cft was again unable to establish that St. Maarten had met the conditions for the second tranche of the liquidity support. That is why the Council of Ministers of the Kingdom has decided not to start any talks with St. Maarten about the provision of a third tranche of liquidity support. If St. Maarten still wishes to conduct this discussion, the country will first have to demonstrate to the Council of Ministers through the Cft that all the conditions set for the second and third tranches have been met.

State of affairs and travel report Curaçao

On 2 and 3 of September I paid a working visit to Curaçao. I would also have liked to visit the other islands but this was not possible due to the applicable travel restrictions. The working visit to Curaçao was in the light of the socio-economic consequences of the Covid-19 crisis. The programme that I followed was mainly aimed at becoming aware of the effects of the crisis from my own observations and hearing what is going on in contacts with residents, companies

and civil society players and to explain the Dutch efforts. This commitment is aimed at increasing the buffer capital, together with Curaçao, with which the country can better carry its autonomy. This demands that the reforms that have been required for a long time, now are actually implemented. At the same time, the Netherlands continues to focus on humanitarian aid and support in the medical field.

During my visit I spoke with the bishop of the diocese of Willemstad. In doing so, I expressed my appreciation for the Church's commitment to supporting vulnerable groups in society. This need for support was also evident from the visit I paid to the Santa Rosa food bank and in conversation with the Red Cross. Various NGOs provide food parcels and vouchers under the coordination of the Red Cross. About 20% of the population of Curaçao is now dependent on this support. I am impressed by the work of all those organisations and volunteers who make food aid possible. I also made several neighbourhood visits where I spoke with residents who are dependent on food aid. These were all notable conversations. Unfortunately, I also observed dire poverty. The severity of the problems was also apparent to me from discussions with stakeholders from the business community and civil society. Those conversations reinforced my belief that the strength that is present in the society of Curaçao should make it possible to work on a better future for Curaçao. A future in which autonomy can actually be implemented. However, it is necessary to create the right preconditions. It became clear to me from the visit I paid to the Corendon Mangrove resort, which has recently been opened, that investments are also possible to create employment.

During my visit I also received petitions from the trade unions. The trade unions are against cutbacks on working conditions and do not want interference in the country's autonomy. In my contact with the trade unions, I indicated that everyone should contribute where possible and that workers should have solidarity with the many who are now out of work. I have also emphasised that precisely because of the hand offered by the Netherlands to implement the necessary reform together with Curaçao, Curaçao will be better able to carry its own autonomy. During the many media contacts I had, I explained the efforts of the Netherlands, answered many questions that have arisen and shared my impressions of the various conversations and visits.

As usual, I also visited the Governor. She informed me about the situation in Curaçao. Following on from my previous contacts, I also spoke with Prime Minister Rhuggenaath and with the Minister of Economic Development, Martina. In those conversations, we discussed in more detail the voluntary offer made by the Netherlands that was on the table in the Council of Ministers of the Kingdom of 10 of July last. From these talks it became clear to me that the government of Curaçao is currently unable to say yes to the offer from the Netherlands and that the talks (also officially) are being continued within the frameworks that were laid down in the Council of Ministers of the Kingdom of 10 of July.

Travel report Bonaire

I visited Bonaire from 30 of August to 1 of September. This visit was dominated by the progress of the Administrative Agreement, the effects of the Covid-19 crisis (medical and economic) and the developments in the field of tourism (nature and blue destination).

I spoke with the individual members of the Executive Council as well as with the entire Executive Council in particular about the progress of the administrative agreement. Although progress is being made in certain areas, such as in the field of social housing and Agriculture, Livestock and Fisheries (LVV), the implementation of the administrative agreement is slowing down. I am still just as optimistic about the possibilities of the administrative agreement, but I am not satisfied with the pace at which it is being implemented. In any case, the greatest urgency must be exercised in getting the supporting civil service in order, the positions of island secretary for example and other key positions are essential for reinforcing governing powers. Progress in financial management is also insufficient and must be taken up vigorously. In that context, I have agreed with the Executive Council to implement the Plan of Action as soon as possible in the context of an unqualified auditor's report. I will also ask the BES Financial Supervision Board to keep me regularly informed about this. While resources are available, progress in road improvements has been insufficient. During my visit, I signed a cooperation agreement between the municipalities of Alphen aan de Rijn, the municipality of Rotterdam, the Public Entity Bonaire and the Kingdom. This will perpetuate the existing cooperation and continue support for road repairs, among other things. It now comes down to the decisive implementation of the various road projects that are in the pipeline. I also discussed the collaboration between the Public Entity Bonaire and the Kingdom in the social domain and other subjects from the administrative agreement. I also discussed the progress of the administrative agreement with the programme manager. The Executive Council and the programme manager share my conclusion that progress is insufficient. The Executive Council has promised me that the efforts and control of progress will be improved and that where necessary help will be requested.

During my visit I also spoke with the MPB and UPB parties from the Island Council. The Friday before my visit, I spoke with the DP party chairman. I also spoke with ten young Bonaireans about the relationship with the government and the developments on Bonaire.

I had talks in the context of the effects of the Covid-19 crisis with employees of the food bank, public health care, social affairs and the board of the Fundashon Mariadal hospital. I also expressed my appreciation for the efforts of all those involved. In the context of the economy, I also held talks with entrepreneurs and the Chamber of Commerce. These talks were mostly focused on ideas to 'get the economy back on track' and the support measures. These talks show me that the entrepreneurs greatly appreciate the support they receive, but at the same time are concerned about the future. Thanks to the support from the Netherlands, the worst blows can be absorbed. It is clear that continued efforts are needed in the near future in relation to the impact of the Covid-19 crisis and its economic and

social consequences for the island. At the same time, this crisis offers the Bonaire board the opportunity and necessity to make choices for the future.

Reference
2020-0000531652

An important topic for the future of Bonaire is nature conservation. I have spoken about the interpretation of the *Blue Destination* concept and the opportunities that this offers for a sustainable development of tourism on Bonaire. This does require choices and decisions by the Public Entity, for example how to deal with the unstructured growth of the number of inhabitants and what kind of tourism is desirable on Bonaire. In the context of nature conservation and the management of free-roaming cattle, I spoke with the new manager of Stinapa. There are signs that marine life is developing positively due to the greatly reduced cruise and other tourism. For example, there are more and larger fish to be seen. No statement can be made about the impact of reduced tourism on water quality. Stinapa is looking for ways to measure the quality of the water on a structural basis, also in order to make the effects of erosion measurable. Erosion that incidentally can be reduced by better drainage and collection of rainwater, which can also be used for agriculture. Better management of stray goats and donkeys also contributes to the prevention of erosion. I spoke about the donkey situation with the manager of the Donkey Sanctuary Bonaire. All this requires choices and decisions by the island government. I am convinced that with good choices a sustainable future for Bonaire lies ahead.

The State Secretary of the Interior and Kingdom Relations

R.W. Knops