



# PUBLICATIEBLAD

## PARLIAMENT OF THE NETHERLANDS ANTILLES SESSION 2000-2001

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STATE ORDINANCE of December 29, 2000  
Containing rules concerning agreements to be concluded  
electronically (State Ordinance Agreements via Electronic  
Channels)

IN THE NAME OF THE QUEEN!

THE GOVERNOR OF THE NETHERLANDS ANTILLES,

Having taken into consideration:

That it is desirable to lay down rules, supplementary to the rules of the Civil Code of the Netherlands Antilles, concerning agreements that are concluded By Electronic Means and matters relating to this;

having heard the Advisory Council, and in joint consultation with Parliament, has laid down the following State Ordinance:

### CHAPTER 1 Definitions

#### Article 1

For the purposes of this State Ordinance and the provisions based on it, the following shall be understood by:

- a. certificate : a confirmation coming from a third party, addressed to the receiver of information dispatched by electronic means, that this information is coming from a certain natural person or legal entity;

- b. certification provider : the natural person or legal entity who/which issues Certificates or renders other services in connection with electronic signatures;
- c. commercial communication : all forms of offering and recommending goods and services, businesses and persons, among which advertising and direct marketing by electronic means from, or aimed at the Netherlands Antilles, directly or indirectly aimed at bringing about agreements;
- d. cryptography : techniques for enciphering electronically stored data with the intention that these data can only be deciphered by certain persons;
- e. service provider : the natural person or legal entity who/which offers services for facilitating information by electronic means;
- f. information : all forms of data, text, images, sound, codes, computer programs, software and data files;
- g. by electronic means : the transmission or storage of data, which are converted for this purpose into series of electronic, radio-electric, electromagnetic, or optic signals;
- h. minister : the Minister of Justice;
- i. personal data : data concerning a certain natural person or legal entity, including both information determining the identity, including address data, telephone number, fax number and E-mail address, and particulars concerning this person such as purchasing behavior and preferences.
- j. electronic signature : electronic data which are attached to or have a logical association with other electronic data and are used as a tool for authentication

## CHAPTER 2 Commercial Communication

### Article 2

1. Commercial Communication shall always be recognizable as such.

2. The natural person or legal entity on behalf of whom/which the Commercial Communication takes place shall be clearly identifiable within the framework of this Commercial Communication.
3. When the provider of Commercial Communication makes use of competitions and games within the framework of Commercial Communication, they shall be recognizable as such, while the conditions for participation shall be easy to comply with, and have to be presented accurately and unequivocally. The provider of Commercial Communication is prohibited from making use within this context of any competition or game regulated by statutory provision.

### Article 3

It shall be possible, by State Decree containing General Administrative Orders:

- a. to designate categories of Commercial Communication that are prohibited;
- b. to designate categories of persons to whom it is prohibited to direct Commercial Communication;
- c. to designate kinds of agreements that:
  1. may not be concluded By Electronic Means or by means of one or more named electronic techniques, or
  2. have to remain accessible by non-Electronic Means as well;
- d. to prescribe obligatory statements within the framework of Commercial Communication;
- e. to lay down further rules as regards the contents and nature of the Commercial Communication, the nature or magnitude of electronic trade and the target group.

### Article 4

1. Uninvited Commercial Communication shall always be recognizable as such, clearly and unequivocally.
2. The receiver of uninvited Commercial Communication shall be given a clearly recognizable and simple possibility for each such message to object to new messages. Once such objection has been communicated, sending of uninvited Commercial Communication to this receiver is prohibited.

CHAPTER 3  
Provider of Commercial Communication

Article 5

1. The provider of Commercial Communication is obligated to state at least the following data completely and clearly in his Commercial Communication:
  - a. the name, registered office or domicile, and the address of the provider of Commercial Communication;
  - b. the information which makes prompt contact and direct and effective communication with the provider of Commercial Communication possible, including his E-mail address;
  - c. where and when the provider of Commercial Communication has been registered in the trade register, including the entry number, or where and when the provider of Commercial Communication has been registered in another way, unless there is no question hereof;
  - d. the various stages to be followed in order to arrive at an agreement By Electronic Means;
  - e. an accurate and unequivocal indication of the product or the service, the price, commission or other compensations and expenses;
  - f. the way of payment and of delivery or execution;
  - g. the applicable conditions, including among other things, in as far as applicable, an indication of the region for which the offer is valid, the revocability or irrevocability of the offer and the duration thereof, the time of delivery, any possible additional costs, including transport charges and insurance premiums;
  - h. the other rights and obligations of parties, including cancellation and other termination possibilities, as well as
  - i. the applicable law and the way of settlement of disputes.

2. If this is necessary in reason for the execution and fulfillment of an agreement By Electronic Means, the provider of Commercial Communication also states the name, registered office or domicile, and the address of his representatives in the country, in which the other party resides or is domiciled.
3. Furthermore, the provider of Commercial Communication who exercises a profession which is regulated in his country of residence and in the country in which he regularly renders his services, by or on behalf of the government or a semi-public body, including a professional order or similar institution, is obligated to furnish information where and since when he is registered, as well as a correct description of his profession and of relevant applicable professional codes, including an existing complaint handling procedure.
4. Further rules may be laid down by or by virtue of State Decree containing General Administrative Orders, concerning information to be supplied, and categories of professional practitioners may be released in whole or in part from the obligation meant in the third paragraph.
5. If the provider of Commercial Communication makes use of special offers, among which discounts, premiums and gifts, then they shall be recognizable as such, while the conditions to make use of these special offers shall be easy to meet, and shall be presented accurately and unequivocally.

#### CHAPTER 4 Agreements By Electronic Means

##### Article 6

1. The provider of Commercial Communication shall make the terms and conditions governing the agreements to be concluded by him By Electronic Means, including any possible general terms and conditions, available to the other party in a way that the other party will be able to save same and reproduce same later, or shall give him same in writing.
2. The provider of Commercial Communication shall provide the other party, before or at the moment of concluding an electronic agreement, with suitable means by which the other party can review in an effective and accessible way whether there are any errors, and can rectify same.

CHAPTER 5  
Electronic signature

Article 7

1. An electronic signature shall have the same legal effect as a hand-written signature, and may be admitted as evidence in legal proceedings.
2. Certificates issued to the public by a Certification Provider shall be recognized for the purpose of providing evidence, on condition that: the Certification Provider meets the regulations to be laid down by State Decree containing General Administrative Orders; or the Certification Provider guarantees the Certificate.
3. By State Decree containing General Administrative Orders, further rules may be laid down concerning electronic signatures, the recognition thereof for other than private-law purposes, the certification and Certification Providers, the supervision over Certification Providers, the recognition of Certificates and Certification Providers, the way of guaranteeing, as well as relating subjects of which regulation is deemed expedient.

CHAPTER 6  
Liability

1. Liability Service Providers

Article 8

1. A Service Provider shall not be liable for the contents of Commercial Communication or other Information dispatched or stored through his intermediary By Electronic Means, on condition that he:
  - a. is not the one from which the Information originates;
  - b. did not select the receiver of the Information;
  - c. did not select nor alter the Information passed on;
  - d. does not know actually that the Information is unlawful or concerns illegal activities, and
  - e. does not infringe any prohibition by offering his services.
2. A Service Provider is obligated to remove Information or make access to it impossible, as soon as he has been ordered to remove the Information or access to it has been prohibited by or on behalf of the Minister, as well as when it has to be clear to him that this Information is unlawful or concerns illegal activities.

3. The Minister can only order the removal and only prohibit access as meant in the second paragraph, if the Information is unlawful or concerns illegal activities, or is contrary to public order and public decency, or if the public interest or the safety of the Netherlands Antilles expressly make this necessary.

## 2. Liability Certification Providers

### Article 9

1. Unless he proves that he did not act negligently, a Certification Provider shall be liable for loss suffered by natural persons or legal entities who/which rely in reason on a Certificate issued by the Certification Provider, in connection with:
  - a. the correctness, at the time of issue, of all data recorded in the Certificate, and the recording in a Certificate of all data prescribed for such a Certificate;
  - b. the guarantee that the signer identified in the Certificate was the holder, at the time of issue of the Certificate, of the data for producing the signature, which correspond with the data given or identified in the Certificate for the verification of a signature;
  - c. the guarantee that the data for the production of the signature and those for the verification of the signature – in case they are both generated by the Certification Provider – can be used complementarily.
2. Unless he proves that he did not act negligently, a Certification Provider shall also be liable for loss caused for natural persons or legal entities who/which relied in reason on a Certificate issued by the Certification Provider, because the cancellation of the Certificate was not registered.
3. A Certification Provider shall not be liable for loss in consequence of the use of a Certificate, exceeding the restrictions indicated on the Certificate by the Certification Provider, provided these restrictions are known by third parties.

## CHAPTER 7

### Protection confidentiality and privacy

#### Article 10

1. Personal Data which are obtained by a provider of Commercial Communication or service provider may only be processed in as far as:

- a. this is justified within the framework of normal business operations;
  - b. this is clear to the person involved;
  - c. the data are relevant and not excessive for effecting agreements By Electronic Means;
  - d. the data are correct, complete and obtained in a lawful way, and
  - e. the processing takes place lawfully.
2. It is prohibited to provide third parties with Personal Data without the express consent of the person concerned, unless this takes place based on a statutory obligation.
  3. Personal Data, of which storage with a view to agreements By Electronic Means already concluded or possibly still is to be concluded is no longer necessary, shall be made anonymous or be destroyed.
  4. By State decree containing General Administrative Orders, further rules may be laid down concerning the storage, processing, passing on, and making anonymous, destruction of Personal Data and the inspection by the person concerned.

#### Article 11

1. The Information a provider of Commercial Communication or a Service Provider receives, and of which he knows or can know in reason that this should be treated confidentially, shall be treated as such.
2. In as far as necessary and possible, the provider of Commercial Communication or Service Provider shall indicate clearly and unequivocally when special risks for maintaining confidentiality are attached to sending Information by means of electronic techniques used or made available by him.
3. By State Decree containing General Administrative Orders, further rules may be laid down concerning the safeguarding of confidentiality of the Information as meant in the first paragraph.



## CHAPTER 8 Cryptography

### Article 12

1. The use of cryptographic techniques is permitted, on condition that the user obtained the disposal of these techniques in a lawful way, and does not use them for illegal activities.
2. By State Decree containing General Administrative Orders, further rules may be laid down concerning the use of cryptographic techniques, including rules contemplating the prevention of abuse.

## CHAPTER 9 Out-of-court settlement of disputes

### Article 13

1. By State Decree containing General Administrative Orders, a Board for out-of-court settlement of disputes may be created, subject to rules and on conditions and procedures to be laid down in it, including the settlement by means of electronic techniques appropriate for this purpose.
2. Parties may submit to the Board meant in the first paragraph for the settlement of their disputes, if these disputes concern Commercial Communication, agreements By Electronic Means, liability of the Service Provider, protection of the confidentiality and privacy, as well as Certificates and Certification Providers.
3. By State Decree containing General Administrative Orders, also other categories of disputes may be designated of which the settlement may be submitted to the Board meant in the first paragraph.

## CHAPTER 10 Supervision and investigation

### 1. Supervision

### Article 14

1. The officials or persons designated for this purpose by State Decree shall be charged with the supervision of the compliance with the provisions by or by virtue of this State Ordinance. Such a designation shall be published in the Curacao Gazette, the publication in which the Central Government publishes all official communiqués.

2. The officials and persons designated by in pursuance of the first paragraph shall be authorized, exclusively in as far as necessary in reason for the performance of their duties:
  - a. to request all information;
  - b. to demand inspection of all books, documents and other data carriers, and to make copies thereof, or to take them with them temporarily for this purpose;
  - c. to subject goods to inspection and examination, to take them with them temporarily for this purpose, and to take samples thereof;
  - d. to enter all places, with the exception of dwelling houses without the explicit permission of the occupant, if necessary accompanied by persons designated by them;
  - e. to enter dwelling houses or parts of vessels used as dwelling place without the explicit permission of the occupant.
3. If necessary, access to a place as meant in the second paragraph, letter d, will be gained with the aid of the strong arm of the law.
4. Title X of the Third Book of the Code of Criminal Procedure, with the exception of the Articles 155, fourth paragraph, 156, second paragraph, 157, second and third paragraph, 158, first paragraph, final phrase, and 160, first paragraph, shall similarly apply to the entry of dwelling houses or of parts of vessels used as dwelling place as meant in the second paragraph, letter e, on the understanding that authorization is granted by the Public Prosecutor in the Common Court of Justice.
5. Each and every person is obligated to give the supervisor every cooperation demanded based on the second paragraph.
6. Those who by virtue of their office, profession or statutory provision are obligated to secrecy, may refuse to grant cooperation, in as far as this ensues from their obligation of secrecy.

#### Article 15

1. When performing their duties, the supervisors shall have an identity card (ID) to be supplied by the Minister with them.
2. They shall promptly show their ID if so requested.

3. The ID shall have a picture of the supervisor, and shall state in any case his name and capacity.
4. By State Decree containing General Administrative Orders, rules may be laid down concerning the way the supervisors perform their tasks.

## 2. Investigation

### Article 16

1. In addition to the persons meant in Article 184 of the Code of Criminal Procedure, the persons designated for this purpose by State Decree shall be charged with the investigation of the offenses penalized in Article 31. Such a designation shall be published in the Curacao Gazette, the publication in which the Central Government publishes all official communiqués.
2. By State Decree containing General Administrative Orders, rules may be laid down concerning the requirements to be met by the persons designated in pursuance of the first paragraph.

## CHAPTER 11 Administrative enforcement

### Article 17

The Minister shall be authorized to have that which has been, or is, done, kept or omitted in violation of this State Ordinance and the provisions based on it, removed, vacated, prevented, restored to the previous state, or performed.

### Article 18

1. A decision to enforce an administrative order shall be put down in writing, and shall be deemed to be an Order. The Order shall state what regulation has been infringed.
2. The announcement thereof shall take place to the offender and other interested parties.
3. The Order shall state a term within which the offender and any possible other interested parties can prevent the enforcement by taking the measures mentioned in the Order himself/themselves. No term has to be allowed, if the required haste forbids this.

4. If the situation is so urgent that the Minister cannot put the Order to enforce an administrative order in writing, the Minister shall take care of putting it in writing and announcing it as soon as possible as yet.

#### Article 19

1. The offender shall owe the expenses attaching to the enforcement of an administrative order, unless the expenses should not, or not entirely, be borne by him in reason.
2. The Order shall state that the enforcement of an administrative order takes place at the expense of the offender.
3. However, if the offender will not be charged for the expenses in whole or in part, the Order shall state this.
4. The expenses shall include the cost of the preparation of the administrative enforcement; in as far as these expenses were incurred after the date on which the term meant in Article 18, third paragraph, has lapsed.
5. The expenses shall also be due if the administrative enforcement was not or not completely implemented because the unlawful situation was terminated.

#### Article 20

1. The Minister shall have the power to collect the expenses due, augmented by the expenses relating to the collection, from the offender by distress warrant.
2. The distress warrant shall be served by process server's writ at the expense of the offender, and is enforceable in the sense of the Code of Civil Procedure of the Netherlands Antilles.
3. During six weeks after the date of service, opposition may be lodged against the distress warrant by summoning the State.
4. The opposition shall suspend the enforcement. At the State's request the Judge may remove the suspension of the enforcement.

#### Article 21

The expenses attaching to the application of administrative enforcement shall be preferential on the object in respect of which they were incurred, and shall be

paid out of the proceeds of the object after the expenses meant in Article 1165, under 4, of the Civil Code of the Netherlands Antilles.

#### Article 22

In order to implement an Order of administrative enforcement, the officials or persons designated for this purpose by the Minister shall be entitled to the powers mentioned in Article 14, second and third paragraph. Article 14, fourth paragraph shall be applicable.

#### Article 23

The placement under seal of buildings and land and what is in or on it constitutes a part of the power to enforce an administrative order.

#### Article 24

1. The carrying off and storage of objects capable thereof constitutes a part of the power to enforce an administrative order, in as far as the application of administrative enforcement requires this.
2. If objects have been carried off and stored, the Minister shall have an official report drawn up thereof, a copy of which shall be given to the owner of the objects.
3. The Minister shall take care of the safe custody of the stored objects, and shall return these objects to the owner as soon as this is necessary in reason.
4. The Minister shall have the power to suspend the surrender until the expenses due have been paid. If the owner is not also the offender, the Minister shall be authorized to suspend the surrender until the cost of the custody has been paid.
5. The State shall not be liable for surrender of the objects stored to an unauthorized person.

#### Article 25

1. If the stored object cannot be returned to the owner within thirteen weeks after storage, the Minister shall have the power to have it sold or, if sale is impossible in his judgment, to transfer the object in ownership to a third party for no consideration, or to have it destroyed.
2. The Minister shall have equal powers, also within this term, as soon as the expenses attaching to the enforcement of an administrative order,

augmented by the estimated cost of the sale, the transfer in ownership for no consideration, or the destruction, will be disproportionately high in relation to the value of the object.

3. Sale, transfer in ownership, or destruction shall not take place within two weeks after the handing of the copy of the official report concerning the carrying off and storage, unless it concerns dangerous substances, or substances that will perish sooner.
4. During three years after the date of the sale, the person who was the owner at that time, shall be entitled to the proceeds of the goods while deducting the expenses attaching to the enforcement of an administrative order and the expenses of the sale. If the owner is not also the offender, the expenses of administrative enforcement shall not be deducted from the proceeds.
5. The State shall not be liable for surrendering the proceeds of the sale to an unauthorized person.

## 2. Order on pain of a penalty

### Article 26

1. Instead of enforcing an administrative order, the Minister can impose an order on the offender on pain of a penalty.
2. The Minister shall fix the penalty at a lump sum, or at an amount per time unit during which the order has not been carried out, or at an amount per infringement of the order. The Minister shall also fix an amount in excess of which no penalty will be forfeited anymore. The amount fixed of the penalty should bear a reasonable proportion to the seriousness of the interest harmed and the contemplated effect of imposing the penalty.
3. In the decision to impose an order on pain of a penalty, which is meant for undoing or terminating, a term shall be fixed during which the offender can execute the order without a penalty being forfeited.

### Article 27

1. The penalties forfeited shall be for the benefit of the State. The Minister can collect the amount due by distress warrant.
2. Article 20, second, third and fourth paragraph shall be applicable.

## Article 28

1. At the offender's request, the Minister may withdraw the order, to suspend its term for a certain period of time, or reduce the penalty in case of permanent or temporary complete or partial impossibility for the offender to meet his obligations.
2. At the offender's request, the Minister may withdraw the order, if the decision has been in effect for one year without a penalty having been forfeited.

## Article 29

1. The power to collect amounts forfeited shall be barred by limitation by the lapse of one year after the day they were forfeited.
2. Bankruptcy and any statutory impediment for the collection of the penalty shall stop the limitation.

## CHAPTER 12

## Directives

## Article 30

If required for the implementation of this State Ordinance and the provisions based on it, the Minister may give a provider of Commercial Communication or a Service Provider one or more directives.

## CHAPTER 13

## Penal provisions

## Article 31

1. Infringement of the prohibitions laid down in the Articles 2, third paragraph; 4, second paragraph; 10, second paragraph or pursuant to Article 3, letters a and b, in as far as committed intentionally, is a criminal offense and shall be punished with, either imprisonment not exceeding two years and a fine not exceeding two hundred and fifty thousand guilders, or with one of the two punishments.
2. Infringement of the prohibitions laid down in the Articles 2, third paragraph; 4, second paragraph; 10, second paragraph or pursuant to Article 3, letters a and b, in as far as committed unintentionally, is an infringement and shall be punished with, either imprisonment not

exceeding six months and a fine not exceeding one hundred and fifty thousand guilders, or with one of the two punishments.

3. Acting in violation of the provisions laid down in, or by virtue of the Articles 3, letters c, d and e; 5, first, third and fourth paragraph; 8, second paragraph; 10, third paragraph; 11, third paragraph; 12, second paragraph; 13, third paragraph, or 14, fifth paragraph, or directives given pursuant to Article 30, is an infringement and shall be punished with imprisonment not exceeding six months or a penalty not exceeding one hundred thousand guilders.

#### Article 32

1. The person that intentionally violate the in article 33 imposed secrecy, will be punished with a jail sentence of maximally two years or a monetary fine of maximally two-hundred and fifty thousand guilders, or with both rulings. The deed punishable by law in this article is a felony.
2. The person, who is at fault for allowing the breach of secrecy, will be punished with a jail term of maximally six months or a monetary fine of maximally one hundred thousand guilders, or with both rulings. The deed punishable by law in this article is an infraction.
3. No prosecution will be initiated unless the party whose secrecy has been breached demands it.

### CHAPTER 14 Final provisions

#### Article 33

Any person that is involved with the execution of this National ordinance during which he obtains at his disposal information of which he is aware of or should have reasonable supposition of its confidential character, and who that is not already by reason of office, profession or legal regulation bound to secrecy as to the information, is obliged to secrecy, except as far as any law imposes on him the duty of disclosure, or as far as the necessity to disclose arises from the execution of his duties following this ordinance.

#### Article 34

This State Ordinance shall become effective on a date to be determined by State Decree.



Article 35

This State Ordinance may be cited as: State Ordinance Agreements By Electronic Means.

Given in Curaçao December 29, 2000

The Minister of Justice, a.i.  
S.F.C. CAMELIA-RÖMER

The Minister of National Recovery  
And Economic Affairs,  
S.F.C. CAMELIA-RÖMER

Issued on December 29, 2000  
The Minister of General Affairs,  
M.A. POURIER