

Committee on the Application of Standards

Date: 16 May 2022

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 16 May 2022.

▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Netherlands-Sint Maarten (Notification: 1951)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

The Government of Sint Maarten has taken note of the direct requests and comments made by the Committee of Experts on the Application of Conventions and Recommendations (hereinafter "Committee of Experts") in their 2022 Report on the Application of International Labour Standards 2022.

The Government of Sint Maarten would like to apologize for the delay in submitting the pending reports. This is in part due to the lack of capacity within Sint Maarten as a Small Island Developing State. The Government of Sint Maarten strives to meet its reporting obligations prior to the deadline each year.

Throughout this letter, the Government of Sint Maarten would like to confirm that the requested pending reports on Conventions Nos 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118 and 144 have been submitted by the Government of Sint Maarten to the ILO. Confirmation of receipt was sent by Mr Carlos Magalhaes on 8 April 2022.

The Government of Sint Maarten has also taken note of the observation and direct request made by the Committee of Experts concerning Convention No. 87 due to allegations made by Employers Council Sint Maarten (hereinafter "ECSM") and Sint Maarten Hospitality and Trade Association (hereinafter "SHTA").

The Committee of Experts has requested the Government of Sint Maarten for the following information:

- (1) to take the necessary measures to review, in consultation with the employers' organizations concerned, the developments mentioned in the Committee of Experts' report concerning Sint Maarten on pages 267–268, in particular as to the establishment and operations of the Soualiga Employer Association (SEA) and its participation in the

tripartite Social Economic Council (SER), in order to ensure complete respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and redress any interference from the public authorities in this regard;

- (2) to provide information on the result of the appeal challenging the appointments to the SER made by the SEA,
- (3) to reply in full to its other pending comments under the Convention, adopted in 2017.

As mentioned in the letter sent by the Government of Sint Maarten to the Committee of Experts on 18 May 2021, it was indicated that Sint Maarten seeks not only to uphold the law but to ensure the principles of Good Governance are followed in common interest of the people of Sint Maarten.

The Government of Sint Maarten has been in constant dialogue with ECSM and SHTA. As previously mentioned, the Government of Sint Maarten sought to create a balanced and broad representation in the SER by having all business owners, from both larger enterprises, but also SMEs (small and medium enterprises), adequately represented in the SER.

The Government of Sint Maarten hoped that through the creation of an umbrella organization, all the above-mentioned employers would be able to have adequate representation within the SER. Therefore the mandate was given to the Chamber of Commerce and Industry of Sint Maarten (hereinafter "COCI") to execute the establishment of such an umbrella employers' organization.

The SHTA was also approached by the COCI to be part of SEA. Employers from SEA, as an umbrella organization, could then be nominated as representatives from different employer sectors to be appointed to the SER. This would then create the much-needed broad and balanced representation in the SER.

The SHTA was not in agreement and declined to join SEA. Therefore, the SHTA created its own umbrella organization, being ECSM. Even in doing so ECSM has kept the same seats and representation that SHTA previously had in the SER. The Government of Sint Maarten is of the opinion that SHTA, now through its umbrella organization ECSM, has always had adequate representation in the SER, as well as in the tripartite consultations. These tripartite consultations are held between the Government of Sint Maarten, employers' organizations and employee organizations.

The Government of Sint Maarten is of the opinion that both umbrella organizations for employers' organizations, being the SEA and ECSM, are able to have representation in the SER as well as in the tripartite consultations. This will achieve greater reflection of all employers on Sint Maarten.

ECSM/SHTA have contested this framework. Therefore, legal proceedings have been filed by the ECSM/SHTA against the Government of Sint Maarten. The petition by ECSM/SHTA was regarded as inadmissible by the Court in First Instance of Sint Maarten. Currently there is an appeal at the High Court of Aruba, Curacao, Sint Maarten and Bonaire, Saba and Sint Eustatius. The verdict of the High Court concerning the appointments and representation of employer organizations in the SER will be rendered at the end of May 2022. The Government of Sint Maarten is awaiting the outcome of this decision. When a verdict is rendered in the court of law, it must be upheld by all parties concerned, unless an appeal is filed.

In relation to the appeal challenging appointments to the SER made by the SEA, the Government does not observe this as a challenge. As Minister of General Affairs, the SER is functioning and providing its participatory function to Government.

With this letter, the Government of Sint Maarten would like to make note that the above-mentioned is a priority that Sint Maarten is addressing continuously. The Government of Sint Maarten will continue dialogue with all parties concerned and hopes that, through the decision by the High Court, the SER will be able to adequately fulfil their role as an advisory council.

The Government of Sint Maarten is able to answer any questions the Committee of Experts may have regarding the abovementioned. Once the High Court decision has been handed down, this can also be shared with the Committee of Experts.