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# Redundancy pay for political authorities

*An investigation into the validity of public expenditures regarding redundancy pay of former political authorities in 2017*



**General Audit Chamber**

**Algemene Rekenkamer**

This report is an English translation of the original Dutch report entitled "Het wachtgeld van gewezen politieke gezagdragers". In the event of textual contradictions or any other differences, the original Dutch text will prevail.

## PREFACE

The many political changes that have taken place in the recent past, are well documented. These events have impacted Government's finances, and by extension, the taxpayer. Ministers and Parliamentarians are entitled to a benefit upon termination of their service. Government finances the benefit which is commonly known as redundancy pay. For redundancy pay to be disbursed, a prescribed official (legal) procedure must be followed.

Our report describes the results of an investigation conducted over fiscal year 2017, and the findings merit immediate attention. Our objective was to confirm the amount of public money spent on redundancy pay in 2017, however, we were unpleasantly surprised, by the lack of information. Moreover, we found that redundancy payments were issued without legal basis, and payments were made in the form of advances. In addition, we found the registration of aforementioned advances to be unreliable. Finally, we determined that checks (controls) are not or insufficiently in place.

In the near term, our recommendations should be implemented in order to improve the financial management of Government.

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## SUMMARY

Former members of parliament or former ministers (also referred to as: former political authorities), are entitled to financial benefits, also known as redundancy pay, which is intended as a way to prevent an abrupt and irresponsible decline in personal income. The duration of the benefit equals the term of service of the political authority but cannot exceed 2 years. Redundancy pay is a direct cost on the national budget. The benefit decreases over time from 95% to 70% of the monthly salary. As soon as income is earned elsewhere, the benefit is proportionately reduced.

Redundancy pay is regulated in the Pension regulation political authorities (in Dutch: Pensioenregeling politieke gezagdragers). Responsibility for the execution of the regulation rests with the Governor, on recommendation of the Minister of Finance. In accordance with the law, the Minister is required to (intensively) monitor whether the relevant recipients of benefits remain in compliance with the conditions for payments.

The purpose of our investigation is to confirm how many former political authorities were entitled to redundancy pay in 2017, the total public funds involved, the implementation of the application process, and the method of (intensive) monitoring conducted by the Minister of Finance. Every country within the Kingdom has similar regulations. We have compared the different regulations and list the most significant differences in this report.

Our results show that redundancy pay is not clearly described in the national budget. There is no budget line item, although Parliament's elucidation of their budget show joint estimates for redundancy pay and pension. Where Parliament was able to provide us with information, Government was not able to provide redundancy pay estimates for the 2017 budget. Although the Ministry of Finance created a budget item entitled "pensions ex-political authorities", they fail to distinguish between pension costs and redundancy pay. Moreover, this budget item only applies to the Ministry of Finance and does not include other ministries. We were unable to determine how the remaining ministries designate redundancy pay in their respective budgets.

We found that in practice, there is a lack of compliance with legal procedures related to redundancy pay. In the past, payments were made in the form of advances. We found that, with the exception of a single case, the legal basis for the payment of redundancy benefits was lacking. As far as we can verify, requests for redundancy pay were submitted to the Ministry of Finance dating back to 2014. Despite the lack of formal authorization (decisions) regarding redundancy payments, advance (payments) were issued under the responsibility of the Minister of Finance. We understand the Ministry of Finance is currently working formalizing the authorizations for redundancy pay applications.

We were unable to verify the total amount paid in advances related to redundancy pay for fiscal year 2017, since information received from the Ministry of Finance proved to be incomplete and unreliable.

Furthermore, we found that the intensive monitoring, which is required by law, does not take place. The ministry is not able to provide information regarding the actual amount of redundancy disbursed in fiscal year 2017, nor is the ministry able to provide information regarding whether the recipients (former political authorities) earned supplemental income. The (legal) procedure for granting redundancy pay was, with the exception of a single case, not adhered to and payments were made without a lawful authorization.

We recommend that the Minister of Finance use the findings and recommendations to improve the internal organization, and in so doing secure a proper process for disbursement of redundancy pay. Moreover, we recommend drafting of regulations pertaining to (intensive) controls/checks.

## RECOMMENDATIONS

In view of our findings, we issue the following recommendations to the Minister of Finance:

- ❖ Implement a budget line item in the national budget, specifically for redundancy pay for former political authorities;
- ❖ Resolve requests for redundancy pay in a timely fashion;
- ❖ Improve the internal organization so that information regarding redundancy payment is always available;
- ❖ Do not grant advances without the required National Decree;
- ❖ Prepare an inventory of paid advances and after redundancy pay has been properly authorized, reconcile the payments;
- ❖ Provide periodic feedback to the Secretary-General of Parliament regarding the expenditures related to the redundancy pay budget of Parliament;
- ❖ Draft a policy describing the required intensive control procedure to guarantee the legitimacy of redundancy payments; and
- ❖ Draft additional rules in accordance with article 4, fifth paragraph of the Pension regulation political authorities, to clarify the base salary calculation for redundancy pay.

Furthermore, we recommend amending the Pension regulation political authorities as follows:

- ❖ Implement a mandatory application procedure for former political authorities who are entitled to redundancy pay;
- ❖ Ensure that former political authorities actively contribute to finding employment;
- ❖ Require a minimal term of service for political authorities of at least 180 days, in order to be eligible to receive the redundancy benefit;
- ❖ Ensure that the pension age of 60 years, as stipulated in the Pension regulation political authorities, is raised to 62 years, analogous to the pension age for government employees.
- ❖ Amend the role of the Governor (as competent authority). Place all authorities with the Minister of Finance, with the understanding that decisions regarding redundancy benefits are issued by National Decree.

## 1. THE AUDIT

In Chapter 1, we explain our audit methodology. We describe the legal basis of the investigation, our main objective, and the audit questions we seek to answer. Furthermore, we explain our audit framework and describe the topics of subsequent chapters.

### 1.1 LEGAL BASIS

Political authorities are entitled to benefits under the Pension regulation for political authorities, as soon as a dismissal is effectuated. This benefit is also known as 'redundancy pay' and is granted for a minimum of 1 year and a maximum of 2 years. The benefit amounts to 95 percent of the salary of a political authority for the first three months, and thereafter is gradually reduced to 70 percent.

The Governor is entrusted with the responsibility of executing the regulation, based on the recommendation of the Minister of Finance.<sup>1</sup> In accordance with the law, intensive monitoring is required to ensure that the recipients of benefits continue to comply with the conditions for payments. The monitoring is expected to be especially meticulous during the period when the benefits are paid. It is at that time that the Minister of Finance must confirm whether the recipient earns supplemental income.<sup>2</sup>

We reviewed the form of this 'intensive monitoring' to determine whether it is adequate, and if improvement is needed. Our investigation is based on article 23 of the National Ordinance General Audit Chamber: we investigate whether the costs arising from the redundancy pay were established in accordance with the National Budget for fiscal year 2017, as well as the Pension regulation political authorities.

### 1.2 PURPOSE OF THE AUDIT

The audit has multiple objectives. First of all, we wish to provide our opinion regarding the validity and compliance regarding payment of redundancy benefits to Ministers and Parliamentarians. Moreover, we want to provide information regarding redundancy regulations within the Kingdom, the number of former political authorities in St. Maarten who received redundancy benefits in 2017, as well as the total expenditure for that fiscal year. Additionally, we issue recommendations to the responsible Minister to improve the process of granting redundancy benefits. Finally, we advise Parliament regarding enhancing the supervision of government control as it relates to the payment of redundancy benefits.

### 1.3 AUDIT QUESTIONS

In this report, we provide answers to the following questions:

1. What is the legal framework?
  - a. Who are political authorities?
  - b. What is redundancy pay?
  - c. What is the (legal procedure) to grant redundancy pay?
  - d. What are the consequences of unlawfully granting redundancy pay?
  - e. Who is responsible?
2. What are the redundancy pay regulations within the Kingdom?
3. Have the financial expenditures arising from the redundancy pay been legally established in accordance with the National Budget (2017), as well as with the Pension regulation political authorities?
4. Is the monitoring conducted by the Minister sufficient to ensure the lawful use of public funds?

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<sup>1</sup> Third paragraph of the Explanatory Memorandum of the Pension regulation for political authorities.

<sup>2</sup> Chapter 7 of the Pension regulation for political authorities.

## 1.4 AUDIT FRAMEWORK

In our audit framework, we explain the scope of our investigation and also the manner in which we conducted our investigation. We focused on:

- ❖ answering our audit questions as listed in paragraph 1.3;
- ❖ the adequacy of internal control (manner of monitoring and the application process for redundancy pay in practice);
- ❖ answering the question whether the internal control conforms to the standard framework<sup>3</sup> used by the General Audit Chamber; and
- ❖ investigating whether redundancy payments have been made in accordance with the law. For example, the Pension regulation political authorities regulates eligibility, and the National Accounting Ordinance (herein after: NAO), stipulates that expenditures made outside the National Budget are unlawful.

## 1.5 CONTENT

In Chapter 2, we provide an overview of the legal framework. We explain the term “political authorities” and the meaning of redundancy pay. Subsequently, we provide insight into the procedure for issuing redundancy benefits. We also describe who is responsible for granting the benefit, and the consequences of unlawfully granted redundancy pay.

Chapter 3 provides a comparison of existing redundancy benefit regulations that currently exist within the Kingdom. This comparison allows us to describe the main differences between regulations.

Whether the costs arising from redundancy benefits were established in accordance with the 2017 National Budget is discussed in Chapter 4. We also provide insight into the number of former political authorities eligible for redundancy benefits in 2017. Our results regarding the method used for monitoring the process of redundancy benefits is described in Chapter 5. By law, the Minister of Finance is required to ‘intensively monitor’ whether former political authorities remain eligible to receive redundancy benefits. We analyzed the current methodology of monitoring and investigated whether this method adequately guarantees the legitimate expenditure of public funds used for redundancy benefits.

The responses to the report, supplemented with our epilogue, are found in Chapter 6.

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<sup>3</sup> The standard framework that we drafted for this investigation is based on the theory of the administrative organization, and the principles of auditing. We then apply these guidelines to the review of the internal controls used for the (lawful) issuance of redundancy benefits.



## 2. THE LEGAL FRAMEWORK OF REDUNDANCY PAY

In Chapter 2, we provide insight into the legal framework of redundancy pay. This framework forms the legal basis for our investigation.

### 2.1 WHO ARE POLITICAL AUTHORITIES?

To qualify for redundancy pay, a political authority must have been appointed and thereafter, dismissed.<sup>4</sup> Members of Parliament, however, are not appointed but elected. Based on article 1, section d, of the Pension regulation for political authorities, members of Parliament fall under the definition of political authorities.

Furthermore, members of Parliament are not dismissed, but in accordance with article 59, first paragraph, of the Constitution, Parliament is dissolved.

Not too long ago, the Council of Advice issued an advice to Government on this matter.<sup>5</sup> The Council of Advice argues that the formal dissolution of Parliament falls within the scope of "dismissal", in accordance with article 1, section d, of the Pension regulation political authorities. After all, dissolution involves a method of formal termination of the appointment as a political authority. We concur with the Council of Advice.

Ministers are appointed and dismissed, and as such, fall under the definition of political authorities.

### 2.2 WHAT IS REDUNDANCY PAY?

Redundancy pay is the benefit available to Ministers and Parliamentarians whose appointment or service has ended.<sup>6</sup> The purpose of this benefit is to bridge the income gap after their service, until such time as the person is able to earn income from, for example, a new function. To qualify for redundancy pay, a person can:

- > no longer hold political office; and
- > not have reached the age of 60 years.

By means of the National Ordinance of April 11<sup>th</sup>, 2016, (AB 2016, no 16), the pension age of government employees was raised from 60 to 62 years. We note that the age to qualify for a pension under the pension regulation for political authorities did not increase to 62 years. This means that the pension age of a political authority is no longer in line with that of a government employee.

A political authority is not eligible for redundancy benefits if (s)he:

- > continues to serve, without interruption, as a political authority; or
- > is convicted of any crime, such that, in the opinion of the Governor, the political authority has shown conduct that is unbecoming to the nation.

The benefit is granted for a period of time equal to the duration of the term served as a political authority, though the benefit will be paid for no less than one year nor more than two years.<sup>7</sup> The benefit is calculated on a monthly basis and issued in monthly installments.<sup>8</sup> The amount of the redundancy benefit is based on the remuneration of a political authority. It is calculated as follows:

- > 95% for the first three months;
- > 85% during the following seven months;
- > 75% during the next ten months; and
- > 70% for the remaining four months.

<sup>4</sup> Articles 1, 2 and 3 of the Pension regulation political authorities.

<sup>5</sup> Advice from the Council of Advice (reference number: SM/02-14-DIV)

<sup>6</sup> The manner in which the function of a political authority ends, does not affect the right to redundancy pay. In other words: even if a political authority resigns, that person retains the right to redundancy pay.

<sup>7</sup> Article 3, first paragraph, of the Pension regulation for political authorities.

<sup>8</sup> Article 10 of the Pension regulation for political authorities.

## 2.3 THE AMOUNT OF REDUNDANCY PAY

The maximum monthly remuneration of a government employee is used as the basis for calculating redundancy pay. The base pay is ANG 18,517 per month.<sup>9</sup> In addition to the remuneration, the Prime Minister receives a fixed allowance of 15%. The other ministers and the chairman of Parliament receive 10% in addition to the remuneration and the members of Parliament receive 5%.

A political authority receives an additional monthly allowance for representation equal to 6% of his or her salary.<sup>10</sup> Political authorities are also entitled to a vacation allowance.<sup>11</sup> The vacation allowance is similar to the payment of a civil servant in the highest salary scale. This benefit amounts to 6% of the annual salary.<sup>12</sup> The salary, including the fixed allowance, are normally considered fixed income components, and used as the basis for calculation of redundancy pay.<sup>13</sup>

In our opinion, the existing legislation does not clearly define the fixed income components. Currently, the vacation allowance and the representation allowance, are not included in the base calculation of the redundancy benefit. In order to establish the exact classification of fixed income components, rules can be drafted in the form of lower legislation.<sup>14</sup> No such rules presently exist.

Figure 1 shows the calculation of redundancy pay per political office.<sup>15</sup> The remuneration and the fixed allowance are used for the calculation.

**Figure 1: remuneration and maximum redundancy pay of a political authority**

Political office	Remuneration including the fixed allowance	Progress in months	Percentage redundancy pay	Maximum redundancy pay per month
<b>Prime Minister</b>	ANG 21,295	1 - 3	95%	ANG 20,230
		4 - 10	85%	ANG 18,101
		11 - 20	75%	ANG 15,971
		21 - 24	70%	ANG 14,906
<b>Other Ministers</b>	ANG 20,369	1 - 3	95%	ANG 19,351
		4 - 10	85%	ANG 17,314
		11 - 20	75%	ANG 15,277
		21 - 24	70%	ANG 14,258
<b>Chair of Parliament</b>	ANG 20,369	1 - 3	95%	ANG 19,351
		4 - 10	85%	ANG 17,314
		11 - 20	75%	ANG 15,277
		21 - 24	70%	ANG 14,258
<b>Other Members of Parliament</b>	ANG 19,443	1 - 3	95%	ANG 18,471
		4 - 10	85%	ANG 16,527
		11 - 20	75%	ANG 14,582
		21 - 24	70%	ANG 13,610

Figure 1 shows the remuneration and the maximum redundancy benefit of the respective political authority. If the former political authority enjoys supplemental income, this income will be deducted from the monthly redundancy payment for the month to which that income relates or can be deemed to relate.<sup>16</sup>

<sup>9</sup> As mentioned in the salary scales of 2012, in Annex A, of the Remuneration regulation for Government employees.

<sup>10</sup> Article 3, first paragraph of the National Ordinance remuneration of political authorities.

<sup>11</sup> The vacation allowance is based on the remuneration, including the representation allowance.

<sup>12</sup> Article 22 of the Civil service holidays and leave regulation.

<sup>13</sup> We verified this against the Ordinance. The Secretary-General of Parliament, in an email dated July 19<sup>th</sup>, 2018, explained that in practice the remuneration including the fixed allowance is used for the calculation of redundancy pay.

<sup>14</sup> Article 4, fifth paragraph offers the possibility to establish further regulations regarding the definition of fixed income components.

<sup>15</sup> The remuneration and redundancy benefit result from the National ordinance remuneration political authorities and article 1, section d, of the National ordinance remuneration civil servants (with reference to Annex A: Salary scales civil servants).

<sup>16</sup> Article 7, first paragraph, of the Pension regulation for political authorities.

## 2.4 WHO IS RESPONSIBLE FOR THE OPERATION OF THE REGULATION?

The legislator has entrusted the implementation of the Pension regulation for political authorities to the Governor, on recommendation of the Minister of Finance. However, the Governor is inviolable as the King's representative, while the ministers are responsible.<sup>17</sup> As such, the actual execution of the regulation lies with the Minister of Finance.

Every decision (for example: granting redundancy pay or initiating an investigation) is issued by National Decree, signed by both the Governor and the Minister of Finance. By signing, the Minister assumes responsibility.<sup>18</sup>

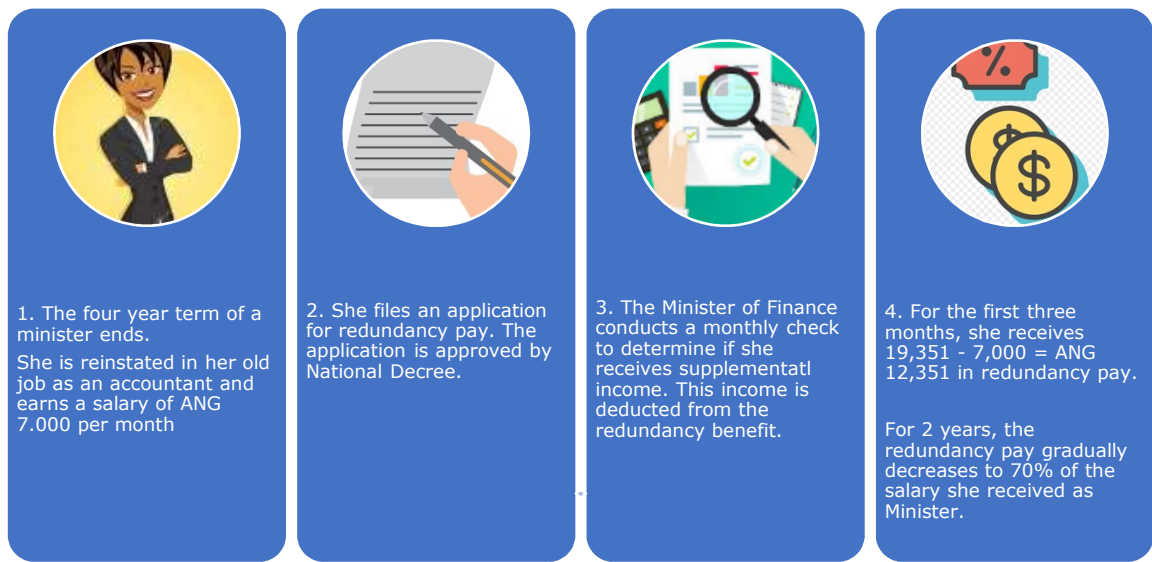
## 2.5 THE PROCEDURE FOR GRANTING REDUNDANCY PAY

The Pension regulation for political authorities sets basic rules regarding the procedure for granting redundancy pay. When a political authority no longer holds political office, (s)he is entitled to a redundancy benefit. The competent authority approves (by National Decree) the application of the applicant, i.e. the former political authority. The application documents, as required by the competent authority, must be submitted.<sup>19</sup>

The competent authority is also authorized to officially grant redundancy benefits. The legal grounds and provisions on which the decision is based, are listed in the National Decree. Furthermore, the years of service must be listed, along with the amount on which the calculation for redundancy pay is based.<sup>20</sup> The competent authority arranges the monthly payments.<sup>21</sup> Monitoring is intensive during the period redundancy benefits are paid. As such, the competent authority checks whether beneficiaries of redundancy pays earn supplemental income.<sup>22</sup>

As mentioned in paragraph 2.4, the Minister of Finance is responsible for the execution of the Pension regulation for political authorities. In practice, it is the minister who decides on the applications. The Governor 'simply' affixes his signature to the National Decree. To explain the legal procedure, we use a fictitious example in Figure 2. Chapter 4 describes the procedure used, and the manner in which the Minister of Finance monitors legal compliance.

Figure 2: an example of the procedure regarding redundancy pay



<sup>17</sup> Article 2 of the Charter for the Kingdom of the Netherlands.  
<sup>18</sup> Also referred to as counter signing (in Dutch: contraseign).  
<sup>19</sup> Article 27 of the Pension regulation for political authorities.  
<sup>20</sup> Article 27 of the Pension regulation for political authorities.  
<sup>21</sup> Article 28 of the Pension regulation for political authorities.  
<sup>22</sup> Articles 34 and 35 of the explanatory notes of the Pension regulation for political authorities.

## 2.6 CONSEQUENCES OF UNLAWFUL ACTS

A former political authority who is entitled to redundancy pay, is legally obligated to provide information and is expected to fully cooperate with the process. (S)he must immediately inform the competent authority of any facts and circumstances that may affect his/her eligibility to receive the benefit or the amount of the redundancy benefit.

The law stipulates the possible consequences in the event a recipient fails to fulfill his or her legal obligations.<sup>23</sup> The consequences are listed in Figure 3. Interestingly, there are no consequences in the event of failure of (intensive) monitoring. In paragraph 5.3, we discuss the lack of monitoring (controls) and, subsequently, the absence of consequences.

Figure 3: possible consequences in case of unlawful acts

Unlawful act	Penalty
<b>Violation of the information obligation</b>	Detention of a maximum of one month, a fine of up to ANG 1,000 or both penalties.
<b>Lack of cooperation</b>	Detention of a maximum of one month, a fine of up to ANG 1,000 or both penalties.
<b>Intentionally providing false information</b>	Detention of a maximum of one month, a fine of up to ANG 1,000 or both penalties.
<b>Intentionally providing false information with the objective of inducing the competent authority to act in a manner contrary to the facts.</b>	Detention of a maximum of one year, a fine of up to ANG 10,000 or both penalties.

<sup>23</sup> Article 36 of the Pension regulation political authorities.

### 3. COMPARISON OF REDUNDANCY PAY WITHIN THE KINGDOM

In order to provide a complete representation of redundancy benefits for St. Maarten, we compared the redundancy regulations in all countries of the Kingdom. In so doing, we are able to provide insight into (several) significant differences and similarities. The Pension regulation for political authorities of St. Maarten has already been described in Chapter 2.

#### 3.1 REDUNDANCY PAY IN CURAÇAO

We begin our comparison in Curaçao. The content of the regulation is identical to that of St. Maarten. Like Curaçao, the regulation is adopted from the Netherlands Antilles.

The main difference between the two regulations is the amount of remuneration political authorities receive. A member of Parliament in Curaçao receives a monthly remuneration of ANG 12,800 (St. Maarten: ANG 19,443), and a Minister earns ANG 14,110 per month (St. Maarten: ANG 20,369).<sup>24</sup> Therefore, redundancy benefits are lower in Curaçao as compared to St. Maarten.

#### 3.2 REDUNDANCY PAY IN ARUBA

In Aruba, the "National Ordinance provisions for former political office holders and their relatives" (in Dutch: Landsverordening voorzieningen gewezen politieke ambtsdragers en hun nabestaanden), is applicable.<sup>25</sup> In order to be eligible for redundancy pay, a former political office holder, at the time of resignation, cannot have attained the age of retirement, and must have held office for at least 180 days. This last condition differs from the regulation of St. Maarten, where a person can hold political office for a single day and remain eligible for an entire year of redundancy payments. Furthermore, in Aruba, a former political office holder is entitled to redundancy pay for one year after his resignation, whereas in St. Maarten, the maximum term is two years.

In Aruba, redundancy pay is 80% (monthly) of the last salary as a political authority. In other words, it is a fixed percentage. The monthly remuneration of an Aruban minister is ANG 15,010, and a Member of Parliament monthly earns ANG 10,865.<sup>26</sup> Just like on St. Maarten and Curaçao, supplemental income is also deducted from redundancy benefits in Aruba.

After a request has been submitted to the Minister of Finance of Aruba, a decision is made on granting redundancy pay by National Decree. The request is accompanied by an excerpt from the Civil Registry, and a statement from the Secretary General of the Council of Ministers, respectively the Secretary General of Parliament. The decree includes the period the applicant held political office.<sup>27</sup>

#### 3.3 REDUNDANCY PAY ON THE BES-ISLANDS

The regulation regarding redundancy pay on the BES-islands is more stringent than St. Maarten's law. For example, after a period of 3 months, a former political authority must sufficiently demonstrate that they have attempted to find employment, accepted suitable employment and cooperated in supportive activities for acquiring employment. A plan is drafted to aid the person involved.<sup>28</sup>

A former political authority is legally required to cooperate. Failing to cooperate could result in the competent authority deciding to (partly) withhold redundancy benefits.<sup>29</sup> It should be noted that the calculation of the remuneration of political authorities on the BES-islands is proportional to the number of inhabitants. This is referred to as the remuneration class. On Saba and St. Eustatius, the monthly salary of a Commissioner is ANG 9,087 per month, and on Bonaire it is ANG 10,195.<sup>30</sup>

<sup>24</sup> The calculation of the remuneration includes the fixed monthly allowance. Vacation allowance and monthly representation allowance are not included.

<sup>25</sup> AB 2010, nr. 91.

<sup>26</sup> Article 4 of the National Ordinance provisions for political office holders Aruba (A.B. 2010 no. 90). We are not familiar with any possible indexation.

<sup>27</sup> Article 18 of the National Ordinance provisions for former political office holders and their relatives (A.B. 2010, no. 91)

<sup>28</sup> Regulation on the duty to seek employment regarding former political authorities BES (<http://wetten.overheid.nl/BWBR0028593/2010-10-10>)

<sup>29</sup> Pension decree for political authorities BES (<http://wetten.overheid.nl/BWBR0028554/2015-04-01>).

<sup>30</sup> Paragraph 4 of the Circular of August 1<sup>st</sup>, 2003, with reference: 2003-0000437602, regarding the Decision on the new legal position for political authorities BES.

### 3.4 REDUNDANCY PAY IN THE NETHERLANDS

When a minister, State Secretary or Member of Parliament resigns in the Netherlands, (s)he is entitled to redundancy pay,<sup>31</sup> for:

- 80% of the last remuneration in the first year; and
- 70% of the last remuneration from the second year onwards.

For the purpose of this investigation, we focused on the benefits issued to Ministers. Ministers in The Netherlands receive a monthly salary of € 11,428 (ANG 22,983).<sup>32</sup>

The duration of redundancy benefits is equal to the time served in political office, however, with a minimum duration of two years and a maximum of three years and two months. There is also a requirement that the ex-political office holder must have served for at least three months. Supplemental income is deducted from the redundancy benefit. Similar to the BES-islands, a former political authority must satisfactorily attempt to find work and accept suitable employment. These requirements apply until the age of 65.

Since 2003, political authorities in the Netherlands who served for less than three months, are granted a six-month redundancy benefit. Up until 2003, former political authorities always received at least two years redundancy pay. After the "Bijlhout-affair", redundancy pay was limited for office holders who served for a short period of time.<sup>33</sup>

### 3.5 OVERVIEW ON REDUNDANCY PAY WITHIN THE KINGDOM

Figure 4 describes the main similarities and differences regarding remuneration and redundancy benefits.

Figure 4: similarities and differences in remuneration and redundancy benefits in the Kingdom

	Monthly remuneration* of a Minister	Monthly remuneration of a Member of Parliament	Period of entitlement	Period one has to hold office to qualify	Percentage of monthly remuneration	Requirement to apply for employment	Cooperate to seek employment
<b>St. Maarten</b>	ANG 20,369	ANG 19,443	Max 2 years	n/a	95 - 70%	✗	✗
<b>Curaçao</b>	ANG 14,110	ANG 12,800	Max 2 years	n/a	95 - 70%	✗	✗
<b>Aruba</b>	ANG 15,010	ANG 10,865	Max 1 year	180 days	80%	✗	✗
<b>Saba and St. Eustatius</b>	ANG 7,960	n/a	Max 2 years	n/a	95 - 70%	✓	✓
<b>Bonaire</b>	ANG 10,195	n/a	Max 2 years	n/a	95 - 70%	✓	✓
<b>The Netherlands</b>	ANG 22,983	n/a	< 3 mths = 6 mths >3 mths = max 3 years and 2 mths	n/a	80 - 70%	✓	✓

\* We have not included possible indexations and allowances.

<sup>31</sup> Members of the First Chamber are not included in our investigation due to the small monthly stipend they receive. However, they are entitled to redundancy pay just like Members of Parliament, though proportional to their stipend.

<sup>32</sup> Article 1 of the Law on the legal position of Ministers and Secretaries (in Dutch: Wet rechtspositie ministers en staatssecretarissen).

<sup>33</sup> Philomena Bijlhout served as State Secretary for Social Affairs and Employment in the Netherlands on July 22, 2002 (responsible for family and emancipation matters). She resigned several hours after her swearing in, after it became known that there was inaccurate information regarding her role in the Surinamese militia, during and after, the so called 1982 "December murders".

## 4. ARE EXPENDITURES IN ACCORDANCE WITH THE 2017 NATIONAL BUDGET?

In Chapter 4, we provide insight into our findings regarding the budgeting of redundancy benefits. We describe the political authorities entitled to redundancy pay in 2017, as calculate the (maximum) expenditure.

### 4.1 BUDGETING FOR REDUNDANCY PAY

Redundancy benefits are a National Budget expenditure.<sup>34</sup> Redundancy pay, as such, is not listed as a budget item in the 2017 National Budget. It should be noted that no specific estimate was ever included in the Government's budgets for redundancy pay. The explanatory notes of Parliament's 2017 budget report an amount of ANG 1,732,357, for budget item 41019 (Compensation and Allowances) for departing members of Parliament.<sup>35</sup> It is unclear why redundancy benefits are not budgeted as a separate budget item. In any case, no distinction between compensation, allowances, redundancy pay, and pension payments is made. This makes it impossible for us to investigate redundancy pay expenditures.<sup>36</sup>

Feedback from the Ministry of Finance on the depletion of the redundancy pay budget, is not provided. The Secretary-General of Parliament expressed the importance of the matter, given that she is unaware of actual expenditures.<sup>37</sup> Absent useful feedback, it is difficult to draft an accurate annual budget for redundancy pay.

According to the Ministry of Finance, all expenditures regarding former political authorities were initially placed on their budget. Purportedly, in 2016, a decision was taken to budget redundancy benefits per ministry.<sup>38</sup> In the 2017 National Budget, the Ministry of Finance incorporated a budget item called "Pensions ex-authorities". No such budget item was introduced for other ministries, which makes it impossible to analyze budget estimates related to redundancy pay. Regarding the Ministry of Finance's budget, we recommend -for transparency- splitting the item "pensions ex-authorities", into separate budget items for pensions and redundancy pay.

### 4.2 FORMER POLITICAL AUTHORITIES AND REDUNDANCY PAY IN 2017

Our investigation concerns fiscal year 2017. Therefore, we investigated how many former political authorities were eligible to receive redundancy benefits during that year. We analyzed the law (see chapter 2), Parliament's annual reports, and in regard to the Ministers, we reviewed the National Gazette.<sup>39</sup> We found six persons eligible for redundancy benefits in 2017, two of whom went on to subsequently hold political office.

In order to verify our results, we sought information from the Ministry of Finance regarding the persons entitled to redundancy pay in 2017. However, the Ministry was unable to provide a complete and accurate list of eligible former political authorities. In addition, we were not privy to information regarding deductions of supplemental income from the redundancy pay of potential beneficiaries. Important to note that only a single application received from a former Minister, resulted in the issuance of the requisite National Decree.

In paragraph 2.5, we explained that the application for benefits is reviewed by the Minister of Finance. As far as we have been able to investigate, there are applications currently being processed by the Minister of Finance.<sup>40</sup> We were not provided with a reason to explain why applications, dating back to October 2014, except for one, were not processed. However, benefits were paid in the form of advances.

<sup>34</sup> Article 32, first paragraph of the Pension regulation political authorities.

<sup>35</sup> Page 4 of the explanatory notes to Parliament's 2017 budget.

<sup>36</sup> In his written response dated August 23, 2018, the Secretary-General of the Ministry of Finance indicates that this statement is incorrect. All payments to those involved are registered and the reason for payment can be retrieved. It does require substantial capacity to trace every transaction, but it is not impossible.

<sup>37</sup> Interview report dated May 8<sup>th</sup>, 2018, in regard to the Secretary-General of Parliament.

<sup>38</sup> Interview report dated May 9<sup>th</sup>, 2018, with the Financial Controller of Staff bureau of the Ministry of Finance.

<sup>39</sup> The National Gazette publishes (among others) the appointments and dismissals of Ministers.

<sup>40</sup> Interview report dated May 11<sup>th</sup>, 2018, with the legal advisor of the Cabinet of the Minister of Finance.

### 4.3 PUBLIC FUNDS SPENT ON REDUNDANCY PAY IN 2017

In order to analyze the amount of public funds spent on redundancy pay, we requested the specifications from the Ministry of Finance.

We did not receive the requested specifications. This is, in part, due to redundancy benefits (mainly) being paid in the form of advances, and the lack of formal authorization. The advances are not registered via the regular payroll administration. Payments were made by cheque.<sup>41</sup> In Chapter 5, we will specify our findings regarding this method of payment and the registration thereof.

In paragraph 4.1, we concluded that specific budget items regarding redundancy pay, are missing. Together with the lack of descriptions regarding payments that were issued, we are not able to investigate whether the 2017 expenditure for redundancy benefits, is in accordance with the National Budget for that year.



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<sup>41</sup> Interview report dated May 9<sup>th</sup>, 2018, with the Secretary General and the head of the Department of Wages and Salaries of the Ministry of Finance.



## 5. THE LAWFULNESS OF REDUNDANCY PAY






Lawfulness is a legal term that describes whether an (intended) activity complies with the applicable rules. In the context of this investigation, the following National ordinances are involved: the National ordinance on the budget of St. Maarten for fiscal year 2017, and the Pension regulation for political authorities.

In this chapter, we answer the question whether the Minister of Finance's actions are legally compliant. In the context of lawfulness, we examined whether the internal organization, including 'intensive monitoring' required from the Minister of Finance, offers adequate certainty that redundancy benefits are legitimately awarded and paid.<sup>42</sup> This chapter also answers the question whether the Minister's monitoring is sufficient to ensure the lawful use of public funds.

### 5.1 OUR FINDINGS ON THE LEGITIMATE EXPENDITURES FOR REDUNDANCY PAY

Figure 5 displays our findings regarding the procedure on the legitimate expenditures for redundancy pay. We included advances in lieu of redundancy benefits.

Figure 5: findings on the procedures regarding the lawful expenditures for redundancy pay, including advances

Requirements	Fulfilled / not fulfilled
<b>Redundancy pay is lawfully awarded and paid, when:</b>	
<b>1</b> An application is submitted <sup>43</sup>	
<b>2</b> The competent authority authorizes redundancy pay by means of a National Decree. <sup>44</sup>	
<b>3</b> Redundancy pay is authorized in the National Budget. <sup>45</sup>	
<b>4</b> For the duration of the benefit payments, the Minister of Finance intensively monitors (checks) that the beneficiaries continue to meet the conditions for the recurring payments. <sup>46</sup>	
<b>An advance on redundancy pay is lawful, when:</b>	
<b>5</b> It is authorized by the competent authority, through a National Decree. <sup>47</sup>	

During our investigation, we found that applications for redundancy pay were submitted to the Governor and the Minister of Finance.<sup>48</sup> The competent authority awarded redundancy pay by means of a National Decree for a single former political authority.<sup>49</sup> Although other National Decrees were drafted, they are not presently adopted.<sup>50</sup> We have been informed, that the Minister of Finance does not currently check whether beneficiaries receive supplemental income.<sup>51</sup> As a consequence, it is possible that deductions were not made to the redundancy benefits resulting in overpayment.

<sup>42</sup> Another name for internal control is the AO/IC. AO/IC or AO/IB is the abbreviation of administrative organization and the internal control / control measures (in Dutch: Interne Beheersing).

<sup>43</sup> Article 27 of the Pension regulation for political authorities.

<sup>44</sup> Article 27 of the Pension regulation for political authorities. Only in one case was redundancy pay granted by means of National Decree. For the remaining applications, National Decrees are absent.

<sup>45</sup> Article 41, first paragraph of the National accountability ordinance.

<sup>46</sup> Explanatory Memorandum on article 34 and 35 of the Pension regulation for political authorities.

<sup>47</sup> Article 28, fourth paragraph, of the Pension regulation for political authorities.

<sup>48</sup> We refer to the letter of Parliament (with reference: UG/034/2014-2015) directed to the Head of Financial Accounting and also the letter to the Governor dated December 2<sup>nd</sup>, 2014, in which an application for redundancy pay is made.

<sup>49</sup> National Decree dated December 20<sup>th</sup>, 2014, in which redundancy pay was awarded.

<sup>50</sup> Interview report dated May 11<sup>th</sup>, 2018, with the legal advisor of the Cabinet of the Minister of Finance.

<sup>51</sup> Interview report dated May 9<sup>th</sup>, 2018, with the Secretary General and the head of the Department of Wages and Salaries of the Ministry of Finance.

## 5.2 PAYMENTS MADE IN THE FORM OF ADVANCES

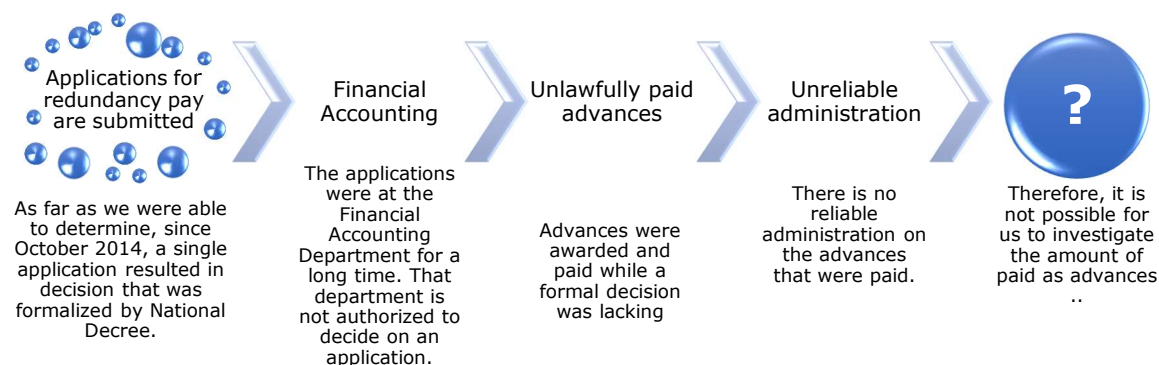
The competent authority is authorized to grant advance payments in lieu of redundancy benefits. This means a National Decree is required to issue an advance. In practice, advances were granted, on the responsibility of the Minister of Finance, without the required National Decrees.<sup>52</sup> The advances were not issued by the competent authority, given the absence of the required National Decrees. In our opinion, these advances were unlawfully issued.

We note that while advances were paid, the Minister of Finance still has to decide on the applications for redundancy benefits, and, consequently, these must be sent to the Governor for his signature. It is striking that, although there are applications dating back to October 2014, and advances paid, formal authorization remains absent. Recently, the Ministry of Finance started working on the elimination of the backlog.<sup>53</sup>

Our findings show that the applications were at the Financial Accounting department. However, Financial Accounting is a registration and executing unit, charged with, among other things, preparing payments and ensuring timely and adequate administration of government services.<sup>54</sup> The unit does not have the authority to decide on redundancy pay applications. In our opinion, the fact that these applications were at this government office, delayed the decision-making process. Moreover, there was no incentive to comply with procedures given that advances were made in lieu of payment. We believe that the Minister of Finance is accountable for this situation.

We requested information from the Ministry of Finance regarding the advances paid to political authorities. We received an Excel-file that includes information about other persons as well as former political authorities.<sup>55</sup> In addition, an item "Salary advance Pension Pol. Auth." is mentioned. We did not receive verification whether this item represents the payment of advances for redundancy pay nor details regarding individual recipients. The Excel-file appears incomplete and is not internally audited for reliability. We concluded that the information could not be relied on, and subsequently, that the ministry is unable to provide details regarding the advances paid in lieu of redundancy benefits. The Ministry of Finance reports that the financial administration for the year 2016, is only recently being finalized due to impacts from cyber-attacks and hurricane Irma.<sup>56</sup> Figure 6 schematically depicts an overview of our findings regarding the advances.

Figure 6: schematic overview of our findings regarding advances paid out



<sup>52</sup> Interview report dated May 9<sup>th</sup>, 2018, with the Secretary General and the head of the Department of Wages and Salaries of the Ministry of Finance.

<sup>53</sup> Interview report dated May 11<sup>th</sup>, 2018, with the legal advisor of the Cabinet of the Minister of Finance.

<sup>54</sup> Article 14 of the Organizational Decree for the Ministry of Finance.









<sup>55</sup> Excel-file titled: "List of advances former political authorities 2017", received from the Ministry of Finance on June 5<sup>th</sup>, 2018.

<sup>56</sup> Email dated May 9<sup>th</sup>, 2018 from the Financial Controller of the Ministry of Finance.

### 5.3 OUR FINDINGS ON THE INTERNAL CONTROLS

Figure 7 shows that the Ministry of Finance does not meet the standard of any of the components required for proper financial management. Internal control is insufficient to guarantee a legitimate allocation and, in particular, the legal continuation of redundancy benefit payments. This is primarily due to the lack of a reliable registration and poor internal control measures.

Figure 7: Findings regarding the administrative organization / internal controls (AO/IC)

Requirements		Fulfilled / not fulfilled
	<b>The AO/IC provides sufficient assurance that redundancy pay is lawfully awarded and paid when:</b>	
1	There is an internal written procedure, established by the Minister of Finance, for awarding redundancy pay	
2	An organizational unit of the Ministry of Finance has been designated as the responsible unit for the operation of the regulation.	
3	The results of each application is recorded as an official advice. This advice is clearly verified <sup>57</sup> by someone other than the person who drafted it.	
4	The Minister of Finance creates a framework of standards with regard to the intensive monitoring required to determine if a beneficiary continues to meet the conditions for the duration of the periodic payment of benefits	
5	Monitoring is intensive for the duration of eligibility for the payment of benefits	
6	Results of the monitoring checks are recorded as an official advice. This advice is clearly verified by someone other than the person who drafted it.	
7	The processing in the payroll administration is internally audited.	
8	SOAB periodically verifies the legitimacy of the redundancy pay expenditures.	

#### 5.3.1 Internal control measures in general

The outcome of our investigation proved to be an unpleasant surprise. As Figure 2 shows, the procedure regarding redundancy pay is a fairly simple one, and entails a few steps:

1. receiving an application;
2. assessing the application;
3. making a decision; and
4. processing the payment.

In our view, the process to establish a person's eligibility to receive redundancy benefits can be carried out quickly. We therefore see no reason why the execution of the regulation is improperly managed, nor do we find an explanation for why the decision-making process for applications has remained incomplete for years. Despite the simplicity of the process, the Minister of Finance has failed to draft a description of the internal organization. No organizational unit or specific functionary has been made responsible for the operation of the Pension regulation political authorities.

<sup>57</sup> With "Clearly" we mean a written advice regarding findings of legal-technical nature. Subsequently, the advice should be signed by the controller.

### **5.3.2 Preliminary investigation**

In Government, it is customary to conduct an assessment (substantive, legal and financial review) prior to formal decision-making or authorization, and record the results in the form of an official advice. Subsequently, another official verifies whether the advice meets all requirements (legal procedural).

We note that with one exception, the result of reviews were not recorded as an official advice. Although not mandatory, an official advice provides additional insight into the preparation of a decision. Furthermore, we established that a review does not take place regardless of an official advice. As a result, there is a risk that errors in the allocation and calculation of the amount of redundancy pay will not be detected. It is therefore impossible for the external auditor to establish whether a proper review took place; there is no audit trail.

### **5.3.3 Intensive monitoring**

With regard to the Minister of Finance's mandatory (intensive) monitoring, we note the following. The explanatory memorandum of the Pension regulation for political authorities, does not define the term "monitoring". As a result, a standard for checking whether beneficiaries earn supplemental income is missing. We believe that the Minister of Finance should define 'monitoring'. Due to the lack of a defined standard, we were unable to investigate whether the Minister's standard is sufficient to ensure that redundancy benefits are always lawfully paid.

There has been no structured form of monitoring. Hence, there is a possibility that benefits / advances were incorrectly established, and unlawful payments were made.

### **5.3.4 Processing amendments of payroll administration**

Redundancy pay awarded by means of National Decrees are processed in the payroll administration for the payment of the net benefit. Internally, there is no check whether the Wages and Salary department processed payments for the correct amount or for the appropriate period. There is a potential for unlawful payment. Incidentally, this risk currently applies to all regular salary payments to political authorities and civil servants.

### **5.3.5 Payouts**

Finally, the official who approves the payments does not verify whether the proposed payments correspond with the relevant National Decrees nor whether the stated names and bank account numbers are correct. In other words: the payment approver 'blindly' signs off. Therefore, the risk of unlawful payments exists.

### **5.3.6 Audit by SOAB**

A few years ago, the internal auditor (Stichting Overheidsaccountantsbureau, in short: SOAB), carried out an audit regarding redundancy pay for political authorities as part of the review of the Government's 2014 Financial Statement.

Among other things, the SOAB determined that in four instances, redundancy pay was incorrectly paid,<sup>58</sup> and the internal check to determine if beneficiaries had supplemental income proved to be inadequate. Management of the Ministry of Finance promised to eliminate the identified shortcomings by the end of 2015. Based on our research, it is evident that the internal control measures have not improved.

SOAB did not report the results of their review to the Minister of Finance. However, their findings were discussed with the management of the Ministry of Finance. In their report related to the audit of the Government's 2015 Financial Statement, SOAB concluded that the process for personnel expenditures (including redundancy pay), is not reliable nor verifiable.

### **5.3.7 Our conclusions**

We draw these conclusions:

- ❖ Government is unable to produce reliable information regarding the amount of advance payments made in lieu of redundancy benefits. There is paperwork, but it is unreliable and inadequate;
- ❖ The procedure for payment of redundancy pay offers no assurance that payments lawfully issued;
- ❖ A standard to define the definition of "intensive monitoring" is missing. As a result, it is not possible to investigate whether the amount paid in redundancy benefits is consistently legally compliant;

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<sup>58</sup> In two cases, redundancy pay was awarded to a person who attained the age of retirement, and in the two other cases a National Decree was lacking.

- ❖ (Intensive) Monitoring of supplemental income of beneficiaries of redundancy benefits (i.e. former political authorities) is absent. As a result, unlawful payments may have been issued;
- ❖ There is no specific budget item for the payment of redundancy benefits. As a result, it is not possible for us to verify whether the payment of redundancy benefits is in line with the 2017 National Budget;
- ❖ Since 2014, only a single formal authorization has been issued based on a redundancy benefit application from a former political authority;
- ❖ Advances were unlawfully issued, under responsibility of the Minister of Finance;
- ❖ The bookkeeping of the advances is unreliable, and as a result, there is uncertainty about the amount of advances paid in lieu of redundancy benefits to former political authorities.

## 6. REACTIONS AND OUR EPILOGUE

In accordance with our audit protocol, we submitted the memorandum of findings (the facts and findings we gathered during the investigation) for comment to the Secretary-General of Parliament and the Secretary-General of the Ministry of Finance, on July 4, 2018. In our letter we indicated that a response should be provided by July 18, 2018. We received a timely response from the Secretary-General of Parliament, though no response was received from the Secretary-General of the Ministry of Finance.

In line with our protocol, we subsequently submitted the draft final report by letter dated August 10, 2018, to the Chairlady of Parliament and the Minister of Finance. Our opinions, recommendations and conclusions were included in the draft report. On August 23, 2018, we received a response from Secretary-General of the Ministry of Finance, also on behalf of the Minister of Finance.<sup>59</sup> We were somewhat surprised that the response focused on the memorandum of findings and not on the draft final report. We value the response of the Secretary-General and have included his remarks which relate to the Memorandum of Findings, despite the overdue response.

### 6.1 REACTION OF THE SECRETARY-GENERAL

In his letter, the Secretary-General writes that the delayed response is due to him being on leave. The Secretary-General indicates that he would like to use the opportunity to respond to the facts presented in the Memorandum of Findings. He mentions that the Memorandum provides a clear picture of the situation regarding the redundancy pay on St. Maarten. Even during the execution of the investigation, he took note of several shortcomings, and initiatives to improve the situation have started. Regarding the report, the Secretary-General responds as follows:

- Paragraph 4.1 states that it would be impossible to analyze how much has been spent on redundancy benefits. This is incorrect. All payments to those involved are registered and the reason for payment can always be retrieved. It does require substantial effort to trace every transaction, but it is not impossible.
- Paragraph 4.2 states that the Ministry of Finance was unable to provide a complete overview of the beneficiaries. The chosen wording gives the impression that this is something to be expected from the Ministry. According to the Secretary-General, this is unjustified. After all, the Ministry responds to applications from entitled persons, and has no role in determining whether or not all entitled persons have submitted an application.

The Secretary-General concludes his letter by expressing his gratitude for the comprehensible report.

### 6.2 OUR EPILOGUE

The main goal of this investigation was to provide insight into how much public money is involved in redundancy pay for political authorities. During our investigation, it became clear to us that this data was not available. It was also evident that measures and monitoring to determine whether beneficiaries receive the correct amount were absent. Subsequently, advances in lieu of redundancy benefits have been granted, without lawful authorization, which in our opinion requires direct attention from the Minister of Finance. The Secretary-General indicates that initiatives have been started to improve the financial management of the redundancy benefit process. We hope to remain informed regarding these initiatives.

The Secretary-General's remark about paragraph 4.1 has been included in the final report. We thank him for his contribution. However, his remark in which he infers that one cannot expect the Ministry of Finance to provide a complete overview of the beneficiaries, is, in our opinion, without merit. In section 4.2 we state that, according to our investigation, a total of 6 people are entitled to redundancy pay in 2017. We tried to verify this information with the Ministry of Finance. They were not able to verify or deny the finding. In our opinion, given the need for the annual budgeting of redundancy pay, and considering the number of beneficiaries and the required monitoring of the process, it is advisable to maintain a registry.

Finally, we note that both the chairlady of Parliament and the Minister of Finance have not made use of the opportunity to respond to our report's opinions, conclusions and recommendations.

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<sup>59</sup> Email dated August 23, 2018, from the Director of the Cabinet of the Minister of Finance, in where he states that the Secretary-General reacts to the findings, on behalf of the Minister of Finance.



General Audit Chamber

Algemene Rekenkamer