



Council of Advice
Raad van Advies

COUNCIL OF ADVICE
RAAD VAN ADVIES
Strengthening our Democracy

ANNUAL REPORT
2019



COUNCIL OF ADVICE

RAAD VAN ADVIES

Strengthening our Democracy

MISSION:

The Council of Advice will guard the democracy and constitutional state of Sint Maarten by providing Independent, Qualitative, Accurate, Sound, Just and Fair advice to the Government and Parliament.

VISION:

The Council of Advice is a professional advisory body functioning in a representative setting that provides Independent, Effective, Academic and Just advice to the Government and Parliament with the aim to stimulate them to enact qualitative legislation in the benefit of a good functioning democratic society for the people and the Sint Maarten community as a whole.

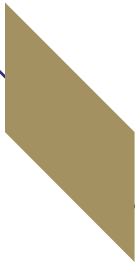


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FOREWORD

Dear reader,

I am very pleased to present you the Annual Report 2019. In this report you will receive an overview of the advice requests received, the advices that were issued by the Council, as well as amongst others the working methods of the members and the Secretariat of the Council in the past year.

You will also be presented with the theme in this year's annual report, namely the Budget National Ordinances. In the current review year, the Council advised on the National budget on four different occasions. It is for this reason why this topic has been chosen as theme for this report.

In the past year, the Council received 18 advice requests, 3 had been transferred from the previous year (2018), and the Council issued 19 advices. Some topics on which the Council has advised in the past year include:

- the Draft National Ordinance General Health Insurance;
- the Draft National Ordinance Initiative in connection with the introduction of the ban on the use of plastic bags;
- the Draft National Ordinance for the alienation of the UTS shares; and
- the Draft National Ordinance establishing a new Code of Criminal Procedure.

The Council has its annual meetings with the President of Parliament, the Prime Minister and other ministers.

In July, the Council participated in the Business Outreach Placement Program (BOPP) of the Ministry of Education, Culture, Youth and Sports Affairs by hiring a student from the local high schools as an intern in the Administrative Department.

In September the Council attended the Four-Councils consultation in the Netherlands. While there, members of the Council whom were attending the Four-Council consultations, were also able to experience King Willem Alexander's speech to open the Parliamentary year of the Dutch Kingdom.

With the aim to continue to deepen and expand the knowledge within the Council, both members and secretariat of the Council attended or followed a masterclass, seminars, forums, lectures and training courses here and abroad during the past year. The secretariat also participated in a team-building event with the other High Councils of State.

The Council also welcomed Mr. Willem-Jan Noordhuizen, LL.M. as a new extraordinary member and also bid farewell to Legal Advisor, Mr. Mischa Keppel. Unfortunately, the Vice-Chair, Ms. Mavis Brooks-Salmon was on medical leave for the last few months of 2019 due to illness.

Finally, as (acting) Vice-chair, I would like to express my gratitude for the good cooperation we experienced among the Councils of the Kingdom of the Netherlands and the members of the Council and the Secretariat for their valuable cooperation. The cooperation between the Secretariat and the Council is an important element in the quality of the Council's advices.

Ms. Marcella Hazel, MA

Acting Vice-chair of the Council of Advice St. Maarten

(July 2019 until December 2020)

1. LEGAL BASIS OF THE COUNCIL OF ADVICE

The Council of Advice is a High Council of State, meaning that its independent position has constitutional foundation. Articles 69 to 73 in the fifth chapter of the Constitution of Sint Maarten regulates the constitutional embedding of the Council.

Based on article 69, second paragraph of the Constitution, the Council is required to give advice to the Government:

- a. on all proposals of national ordinances and national decrees, containing general measures;
- b. on proposals as referred to in the Charter of the Kingdom of the Netherlands regarding approval and termination of treaties which concern Sint Maarten;
- c. on proposals of Kingdom laws and administrative orders of the Kingdom;
- d. in extraordinary cases and in all other cases deemed necessary by the Government.

The Council is required to give advice to Parliament on proposals for initiative laws, the so called draft initiative ordinances.

The Council is also authorized to provide Government with unsolicited advice whenever the Council deems it necessary.

1.1 THE ASSESSMENT FRAMEWORK

The Council examines draft legislation on the basis of an assessment framework similar to the assessment framework of the Council of State in the Netherlands. This framework consists of a policy analysis, legal analysis and a technical legal analysis.

The **policy-analytical assessment (Du: BAT)** deals with the critical analysis of the policy proposal. An important point of interest is the elucidation to the proposal. Is the reason for this new law or measure clearly defined? And is this line of reasoning convincing?

The **judicial assessment** evaluates the judicial quality of the proposal. It concerns two main divisions:

- a. Review against higher law; and
- b. Does it fit within the existing law?

With the **legal technical assessment**, the technical quality of the proposal and the elucidation to the proposal are evaluated. Technical aspects as logical and systematic structure, intrinsic consistency and terminology are scrutinized.

This assessment is effectuated on the basis of the Instructions for regulation of Sint Maarten and the Guidelines for the realization of legislation and regulation for Sint Maarten.

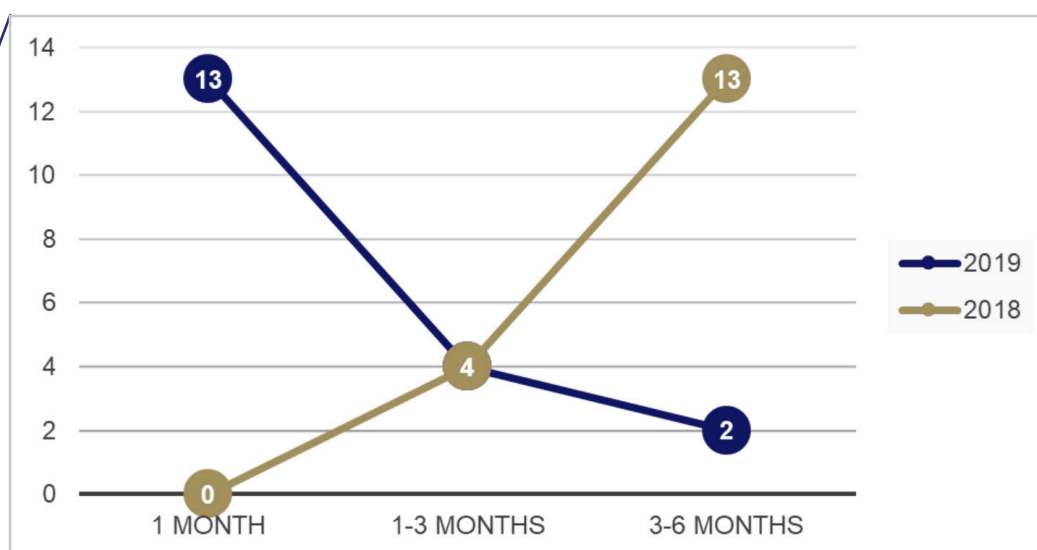
1.2 ADVISORY TIME

The advisory time for advices at the Council depends on amongst other things the complexity of the advice request, the order of prioritizing upon request of the government or Parliament and the workload of and the secretariat at the Council.

In addition to the complexity of the advisory request, the fact that the Council can seek third party consultation in order to render its advice, also plays a part in the advising period. Ultimately, the Council prefers not to bind itself to deadlines in order to ensure high-quality advice.

If the processing time were to be divided into categories of 1 month or less, 1 to 3 months and 3 to 6 months, then the distribution of the processing time in 2019 would be the following:

Advisory Time



1.3 DICTA OF THE COUNCIL OF ADVICE ON DRAFT ORDINANCES AND DRAFT DECREES CONTAINING GENERAL MEASURES

At the end of an advice, the Council provides a final formal statement (dictum) concerning the proposed draft legislation. This dictum is based on considerations regarding the facts that are mentioned in the advice.

Depending on the material content of the comments, the Council, in its advice to the government, proposes with regard to draft national ordinances and draft national decrees, containing general measures, one of the types of dicta in the Council's list of established dicta included in Appendix 2.

2. OPERATIONAL MANAGEMENT OF THE COUNCIL OF ADVICE

2.1 COMPOSITION OF THE COUNCIL OF ADVICE IN 2019

His Excellency, the Governor of Sint Maarten, drs. Eugene Holiday is the constitutional chair of the Council of Advice. The Governor can exercise the chairman's function in meetings of the Council as often as he deems it necessary; on those occasions he has an advisory voice.

Article 70, first paragraph, of the Constitution of Sint Maarten and Article 1 of the Council of Advice Ordinance states that the Council consists of five members, including the vice-chairperson and, at most, five extraordinary members.

The composition of the Council of Advice as per January 1, 2019 was as follows:

Chair:	His Excellency, the Governor of Sint Maarten drs. E.B. Holiday
Vice chair, also member:	drs. Mavis Brooks-Salmon, LL.M.
Members:	Ms. Marcella Hazel, MA Mr. Rik Bergman, LL.M. Ms. Patricia Philips, LL.B. Mr. Alpheus Tatem, MF. Acc.
Extraordinary members:	Ms. Melinda Hoeve, LL.M. Ms. Maria Van der Sluijs-Plantz, LL.M.

The composition of the Council of Advice as per December 31, 2019 was as follows:

Chair:	His Excellency, the Governor of Sint Maarten drs. E.B. Holiday
Vice chair, also member:	drs. Mavis Brooks-Salmon, LL.M.
Members:	Ms. Marcella Hazel, MA (Acting Vice-chair) Mr. Rik Bergman, LL.M. Ms. Patricia Philips, LL.B Mr. Alpheus Tatem, MF. Acc.
Extraordinary members:	Ms. Melinda Hoeve, LL.M. Ms. Maria Van der Sluijs-Plantz, LL.M. Mr. Willem Jan Noordhuizen, LL.M.



Figure 1 - Mr. Willem Jan Noordhuizen was appointed as per March 4, 2019 as an Extra-ordinary member of the Council of Advice..

The secondary activities of the members of the Council of Advice are included in annex 1.

2.2 COMPOSITION OF THE SECRETARIAT IN 2019

Article 11, first paragraph of the Council of Advice ordinance states that the Council has a secretariat with at the head the Secretary Director of the Council. The staff of the secretariat is appointed by national decree based on the recommendation of the Council. They are suspended and dismissed by national decree, after the Council is heard.

The secretariat supports the Council in the broadest sense of the word. It is responsible for preparing and recording the meetings of the Council, to carry out research on a high academic-level for various advice requests. It is also responsible for the preparation of draft advices. The secretariat assists the Council in maintaining and enhancing working relationships with Government, Parliament, the Councils of Advice of Aruba and Curaçao and the Council of State in the Netherlands. The secretariat also encourages contacts with other institutions/advisory bodies.

The composition of the secretariat of the Council of Advice as per January 1, 2019 was as follows:

Secretary Director:	Mr. Ajamu Baly LL.M.
Legal advisor(s):	Ms. Nathalie Tackling, LL.M. Mr. Mischa Keppel, LL.M. Mr. Jessey Salomon, LL.M.
Office Manager:	Ms. Shariselle Hennis, BBA
All-round administrative Assistant:	Ms. Withney Murray, BBA

The composition of the secretariat of the Council of Advice as per December 31, 2019 was as follows:

Secretary Director:	Mr. Ajamu Baly, LL.M.
Legal advisor(s):	Ms. Nathalie Tackling, LL.M. Mr. Jessey Salomon, LL.M.
Office Manager:	Ms. Shariselle Hennis, BBA
All-round administrative Assistant:	Ms. Withney Murray, BBA

2.3 KNOWLEDGE POLICY AND TRAINING

The Council values the continued development of knowledge of the staff of the Secretariat, as well as of the members themselves. To perform its tasks adequately, the Council is dependent on the extent to which knowledge is available. In addition to the library, which is supplemented as much as possible with current literature, the members of the Council and the secretariat have attended various trainings and courses. The most important ones are listed below:


- The members of the Council and the Secretariat attended the Governor's symposium themed 'Shaping Sustainable Economic Recovery in the Caribbean - Challenges and Opportunities.
- In June, two Legal advisors as well as a member of the Council attended the Financial Management days organized by the 'College Financien Toezicht' (CFT) in Curaçao.
- Two Legal advisors and a member of the Council attended the 4th Dutch Caribbean AML & Gaming Regulation Forum in June.
- A member of the Council attended a Pension Seminar organized by 'Algemeen Pensioenfondsen Sint Maarten' in June.

- A member of the Council attended a Conference & Workshop (Economic Research Papers) organized by the Central Bank of Curaçao & Sint Maarten in Curaçao in June.
- In September, the Secretary Director and two Legal advisors took a course on Labor Law.
- In October, a member of the Council attended a Masterclass on Environmental law in Aruba organized by the Council of Advice Aruba.
- The Secretary Director and Legal Advisor followed a course titled “Introduction to Kingdomlaw’ in November.
- Two Legal advisors attended an AML/CFT Awareness and National Risk Assessment Preparations Conference in December.

2.4 FINANCIAL MANAGEMENT

Based on article 26, second paragraph of the Council of Advice ordinance and articles 35, 40, 41 and 42 of the National Government Accounting Ordinance (in Dutch: Comptabiliteitslands-verordening) the vice-chair is in charge of the financial management of the Council. Article 26, first paragraph of the ordinance states that Parliament has to make all relevant facilities available to the Council so that the Council can properly and independently execute its duties, this being in agreement with the Council and the relevant Minister. The Council submitted its draft budget for the year 2019 to the Minister of Finance and Parliament in accordance with the National Government Accounting Ordinance.

2.5 COMMUNICATION



The Council held meetings during the year with all Ministers¹ and the President of Parliament. The purpose of these meetings is to promote cooperation and to gain insight in what the Council can expect in terms of draft legislation and the possibility to coordinate this.

The public can stay up to date on all important information, events and opinions of the Council via the website of the Council www.councilofadvice.sxm. Users are able to track and follow the receipt and progress of new advice requests until the Council has rendered its advice. In addition, users also have access to advices that have been made public. The Council website is available in both the English and Dutch language.

¹ At the time of scheduling, a Minister of Public Health, Social Development and Labor was not yet appointed.

2.5.1 NATIONAL ORDINANCE OPEN GOVERNMENT (LANDSVERORDENING OPENBAARHEID VAN BESTUUR)

The manner in which the Council performs its tasks should be known to Government, Parliament, other institutions and the people of St. Maarten. The publication of the advices of the Council in line with the National ordinance open Government is one of the available means of communication. Based on the ordinance the Minister of General Affairs publicizes the advices of the Council. Advices on draft ordinances may be publicized simultaneously with the submission of the draft ordinance to Parliament by Government or by the initiative takers. A copy of the advice of the Council, as well as the explanatory report from Government on the advice of the Council is sent to Parliament by Government. This is also done in the case it involves a draft initiative ordinance. Advices on all other draft legislation other than ordinances, where publication in the Official Publication (in Dutch: Afkondigingsblad) is mandatory, are published simultaneously with that publication. Advices in any other cases are published within six weeks after the advice is issued.

2.5.2 LECTURES

The Council held a lecture in May entitled “Instruction Authority of the Kingdom”. This lecture was organized in close cooperation with the University of Curaçao Dr. Moises Da Costa Gomez. The keynote speakers for this lecture were Professor Lodewijk Rogier, LL.M. and Mr. Aubrey Bakhuis, LL.M.



Figure 2: Professor Dr. Goudappel speaking to the audience at the lecture.



Figure 3: Keynote speakers Professor L. Rogier, LL.M. and Mr. Aubrich Bakhuis, LL.M.

2.5.3 FOUR-COUNCILS CONSULTATIONS

The Four-Councils consultations was held in the Netherlands from September 15-17. The Four-Council consultation is a meeting that is held every two years between the Council of Advice of Aruba, Curaçao and Sint Maarten and the Council of State of the Netherlands. During the Four-Council Consultation, common areas of interest were discussed and the Councils exchanged knowledge and experiences with each other. The following topics were discussed during this consultation.

- The implementation of legislation and the reviewing thereof during the advising phase;
- The socio-economic effects in the community on the financial supervision as regulated in the consensus-Rijkswet financieel toezicht Curaçao and Sint Maarten (Rijkswet) in nine years;
- Bottlenecks in the advising phase by the Caribbean Councils of Advice with Kingdom laws; &
- The internal quality process of the Advisory department.



Figure 4: (L to R): Ms. Hazel, Mr. Baly, Mrs. Brooks-Salmon & Mr. Bergman.

Figure 5: Official 2019 Four-Councils Consultation group picture.

Figure 6: Mrs. Brooks-Salmon.

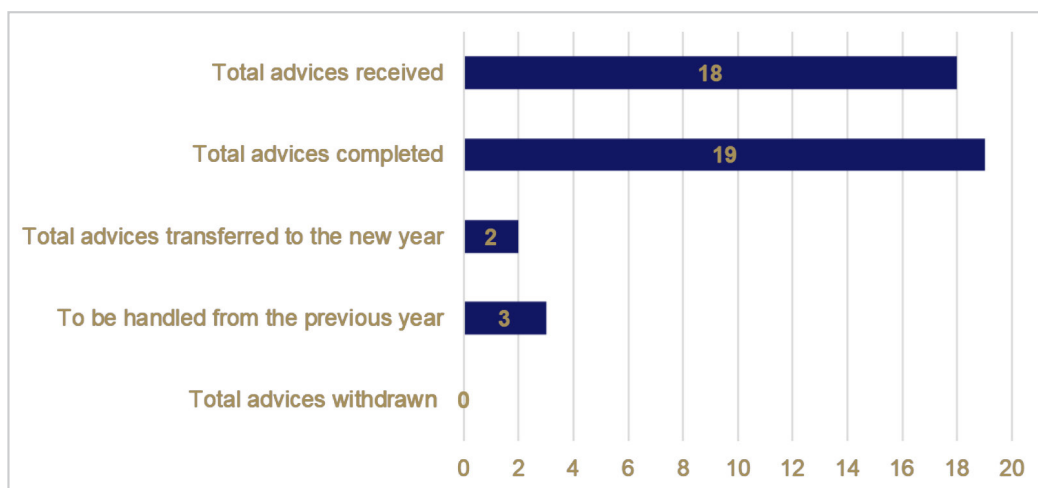
Figure 7: The Council of Advice Sint Maarten with Ms. J. Wuite, Minister Plenipotentiary Sint Maarten.

3. OUTPUT OF THE COUNCIL OF ADVICE

3.1 ADVICE REQUESTS AND ADVICES

The following is a chart and an overview of the request for advices for the year 2019:

Advice requests and rendered advices 2019



GOVERNMENT	
CoA ref. nr.	Subject
SM/13-17 NO	National Ordinance regulating a compulsory uniformed insurance against medical expenses (URGENT)
SM/01-19 NO	National Ordinance stipulating the Budget for Country Sint Maarten for the service year 2019 (National Ordinance Budget 2019)
SM/02-19 NO	National ordinance establishing a new Code of Criminal Procedure (Code of Criminal Procedure)
SM/03-19 NO	National Ordinance amending the National Ordinance turn over tax in connection with the exemption of psychologists
SM/04-19 NO	National Ordinance stipulating the budget for country Sint Maarten with amendments to the general and capital expenditures
SM/05-19 NO	National Ordinance amending the National Ordinance on Corporate Governance in connection with the implementation of some technical adjustments and to repeal the National Ordinance on Corporate Governance of the former Netherlands Antilles
SM/06-19 NO	National Ordinance stipulating the Budget for Country Sint Maarten for the service year 2020 (National Ordinance Budget 2020)
SM/07-19 NO	National Ordinance amending the Authorization National Ordinance for the disposal of UTS shares

Overview advice requests National Ordinances.

GOVERNMENT	
CoA ref. nr.	Subject
SM/08-18 ND	National Decree, containing general measures, of the implementation of Article 61a of the General National Ordinance on National Taxes (National Decree on international assistance in the levying of taxes)
SM/01-19 ND	National Decree, containing general measures, amending the National Decree on the legal position of the Sint Maarten Member of the Council of State of the Kingdom in connection with the age of the functional discharge.
SM/02-19 ND	Draft National Decree, containing general measures, for the simplification and clarification of the National Decree Designation of Positions of Confidentiality and the execution of security screenings.
SM/03-19 ND	Draft National Decree, containing general measures, amending de annexes belonging to the National Decree Designation of Positions of Confidentiality and the execution of security screenings.
SM/04-19 ND	Draft National Decree, containing general measures, amending the electoral decree in connection with amending model 22 belonging to article 11 of the Electoral decree
SM/05-19 ND	Draft National Decree, containing general measures, withdrawing the legal position of the decree Police Corps Netherlands Antilles 2000
SM/06-19 ND	Draft National Decree, containing general measures, amending the Electoral decree in connection with the adjustment of the remuneration for the Vicechair, members and extra-ordinary members of the Central Voting Bureau

Overview advice requests National Decrees.

ILV	
CoA ref. nr.	Subject
SM/01/19-ILV	Initiative National ordinance to grant authorization for the alienation of the shares in the share capital of United Telecommunication Services N.V. belonging to country Sint Maarten
SM-02-19 ILV	Initiative National ordinance to amend the Criminal Code in connection with the increase of the maximum penalty for rape, the introduction of a sex offenders registry and the introduction of the option to terminate a pregnancy as a result of rape.
SM-03-19 ILV	Initiative National ordinance amending the National ordinance establishing the budget of Sint Maarten for the 2019 service year in connection with increasing the budgets of certain youth and social programs (First supplementary budget 2019)

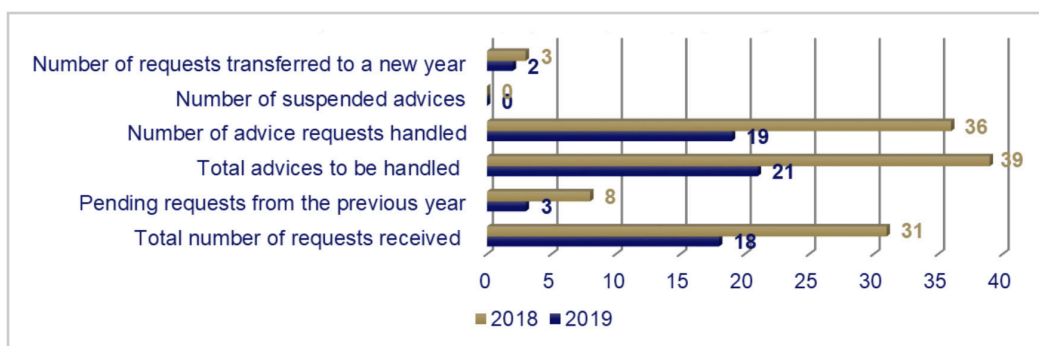
Overview advice requests National Initiative Ordinances.

AMvrB	
COA ref. nr.	Subject
SM/01-19 AMvRb	Draft General Measure of the Kingdom amending the decree 'Kapittel voor de civiele Orden' (Chapter for the civil Orders) in connection with the implementation of normalizing the legal position of civil servants.
SM/02-19 AMvRb	Draft General Measure of the Kingdom amending the 1988 Red Cross decree to repeal the requirement to obtain consent from the Crown with the statutes and in keeping with some other amendments.

Overview advice requests General Measures of the Kingdom.

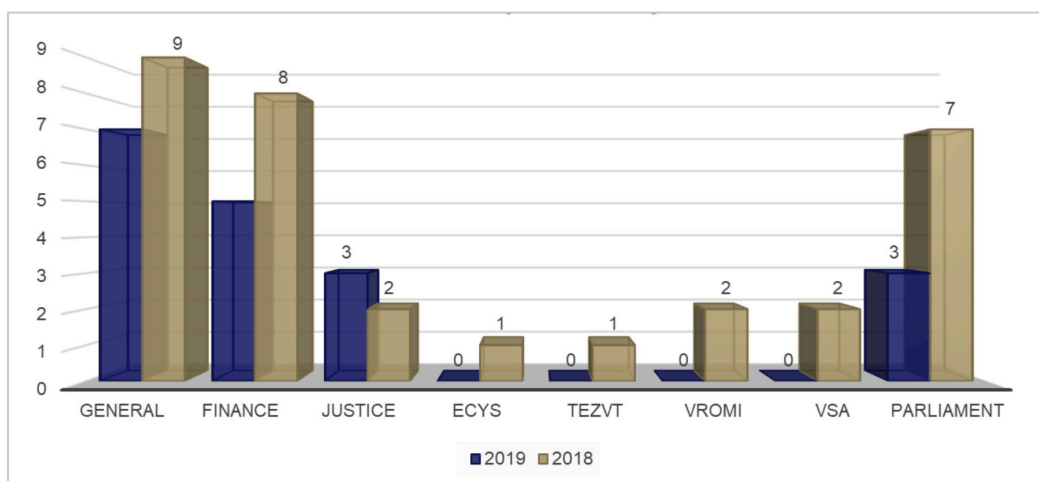
At the end of the year 2019 there were 2 advice requests that were pending. These advices were transferred to the new year.

Incoming/Outgoing Advice Requests



The below chart reflects an overview of advice requests received in 2019 divided per ministry (including draft initiative laws of Parliament):

Advice Per Ministry



Below is an overview of the advices issued in 2019:

#	SUBJECT	DICTUM
Government		
1	Draft National Ordinance regulating a compulsory uniform insurance against medical expenses (URGENT) Reference: SM-13-17 LV Advice: 19-mar-19	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
2	National Ordinance stipulating the Budget for Country Sint Maarten for the service year 2019 (National Ordinance Budget 2019) Reference: SM/01/19 LV Advice: 19-feb-19	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
3	National ordinance establishing a new Code of Criminal Procedure (Code of Criminal Procedure) Reference: SM/02/19 LV Advice: 2-apr-19	To send the draft ordinance to Parliament after the observations of the Council have been considered.
4	National Ordinance amending the National Ordinance turn over tax in connection with the exemption of psychologists. Reference: SM/03/19 LV Advice: 28-mar-19	To send the draft ordinance to Parliament after the observations of the Council have been considered.
5	National Ordinance stipulating the budget for country Sint Maarten with amendments to the general and capital expenditures. Reference: SM/04/19 LV Advice: 21-may-19	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
6	National Ordinance amending the National Ordinance on Corporate Governance in connection with the implementation of some technical adjustments and to repeal the National Ordinance on Corporate Governance of the former Netherlands Antilles. Reference: SM/05/19 LV Advice: 15-oct-19	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.

Advices rendered during the reporting year 2019

7	National Ordinance stipulating the Budget for Country Sint Maarten for the service year 2020 (National Ordinance Budget 2020). Reference: SM/06/19 LV Advice: 15-oct-19	Not to send the draft ordinance to Parliament.
8	National Ordinance amending the Authorization National Ordinance for the disposal of UTS shares. Reference: SM/07/19 LV Advice: 5-nov-19	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.
9	National Decree, containing general measures, of the implementation of Article 61a of the General National Ordinance on National Taxes (National Decree on international assistance in the levying of taxes). Reference: SM/08/18 LBham Advice: 12-feb-19	Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered.
10	National Decree, containing general measures, amending the National Decree on the legal position of the Sint Maarten Member of the Council of State of the Kingdom in connection with the age of the functional discharge. Reference: SM/01/19 LBham Advice: 4-jun-19	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council.
11	Draft National Decree, containing general measures, for the simplification and clarification of the National Decree Designation of Positions of Confidentiality and the execution of security screenings. Reference: SM/02/19 Lbham Advice: 16-jul-19	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council.
12	Draft National Decree, containing general measures, amending de annexes belonging to the National Decree Designation of Positions of Confidentiality and the execution of security screenings. Reference: SM/03/19 LBham Advice: 3-sept-19	To adopt the draft decree, containing general measures.

Advices rendered during the reporting year 2019.

13	Draft National Decree, containing general measures, amending the electoral decree in connection with amending model 22 belonging to article 11 of the Electoral decree. Reference: SM/04/19 LBham Advice: 10-dec-19	To adopt the draft decree, containing general measures.
14	Initiative National Ordinance amending the General Police Ordinance (AB 2013, GT no. 42) in relation to implementing a ban on plastic bags. Reference: SM-03-18 ILV Advice: 22-jan-19	To conclude, the Council suggests that Parliament takes the comments from this advice into account
15	Initiative National ordinance to grant authorization for the alienation of the shares in the share capital of United Telecommunication Services N.V. belonging to country Sint Maarten. Reference: SM/01/19 ILV Advice: 16-apr-19	The Council suggests the initiator to clarify the explanatory memorandum to the draft and advises Parliament to consider the comments in this advice.
16	Initiative National ordinance to amend the Criminal Code in connection with the increase of the maximum penalty for rape, the introduction of a sex offenders registry and the introduction of the option to terminate a pregnancy as a result of rape. Reference: SM/02/19 ILV Advice: 17-dec-19	The Council advises not to adopt the initiative in this manner.
17	Initiative National ordinance amending the National ordinance establishing the budget of Sint Maarten for the 2019 service year in connection with increasing the budgets of certain youth and social programs (First supplementary budget 2019). Reference: SM/03/19 ILV Advice: 17-dec-19	The Council, notwithstanding the fact that it agrees that such programs are important for the reasons as indicated by the initiator, objects to the National ordinance initiating the amendment of the National Ordinance establishing the budget of Sint Maarten for the 2019 financial year on the basis of practical enforceability and advises the initiator not to submit the draft to Parliament.

Advices rendered during the reporting year 2019.

18	<p>Ontwerp van Algemene maatregel van rijksbestuur Besluit houdende aanpassing van het besluit Kapittel voor de civiele orden in verband met de invoering van de normalisering van de rechtspositie van ambtenaren.</p> <p>Kenmerk: SM/01-19 AMvRb Adviesering: 4-jun-19</p>	<p>To conclude, the Council suggests that the Government approve the General Measure of the Kingdom and its explanatory memorandum.</p>
19	<p>Ontwerp van Algemene maatregelen van rijksbestuur Besluit tot wijziging van het Besluit Rode Kruis 1988 in verband met het vervallen van de eis van instemming van de Kroon met de statuten en in verband met enkele andere wijzigingen.</p> <p>Kenmerk: SM 02-19 AMvRb Adviesering: 4-jun-19</p>	<p>To conclude, the Council suggests that the Government approve the General Measure of the Kingdom and its explanatory memorandum.</p>

Advices rendered during the reporting year 2019.

3.2 FREQUENT ADVISORY COMMENTS

The Council evaluates in principle each advice request on its own. Nevertheless, there are points that often return in the advices: the frequent advisory comments. In 2017 the three most mentioned advisory comments were on the following aspects:

1. Financial paragraph

The made remarks concerned inadequately substantiating the financial plans in the draft legislation. In particular article 10 of the National accountability Ordinance was infringed upon because the financial paragraph incorrectly did not (sufficiently) delve into the financial consequences of the plans or underestimated these consequences.

2. Quality of legislation

The made remarks pertained to the quality of the draft legislation. More specifically, the remarks focused on the fact that parts of the drafts were not in accordance with the rules for drafting legislation Sint Maarten.

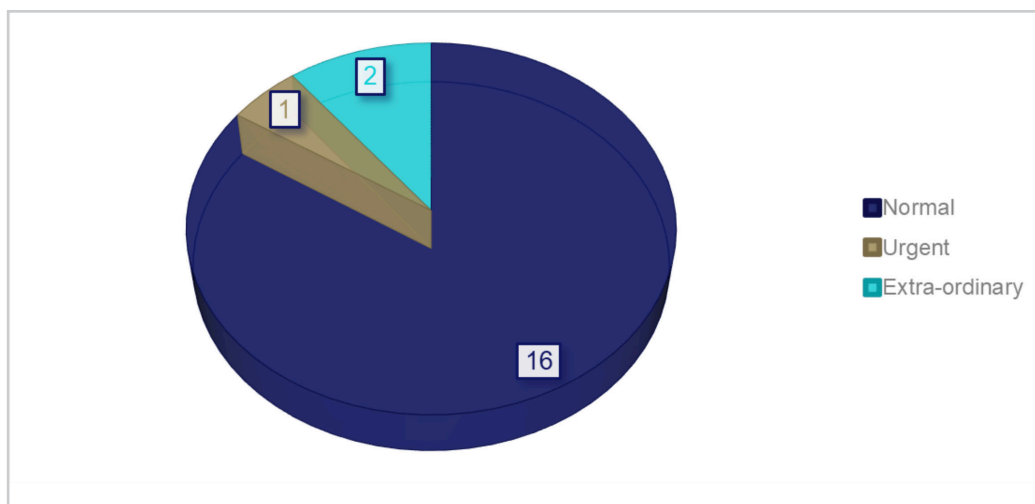
3. Entry into force provision

These comments related to the observation that the Government kept using Entry into force provisions that are other than those established and not in accordance with the rules for drafting legislation Sint Maarten.

3.3 MEETINGS

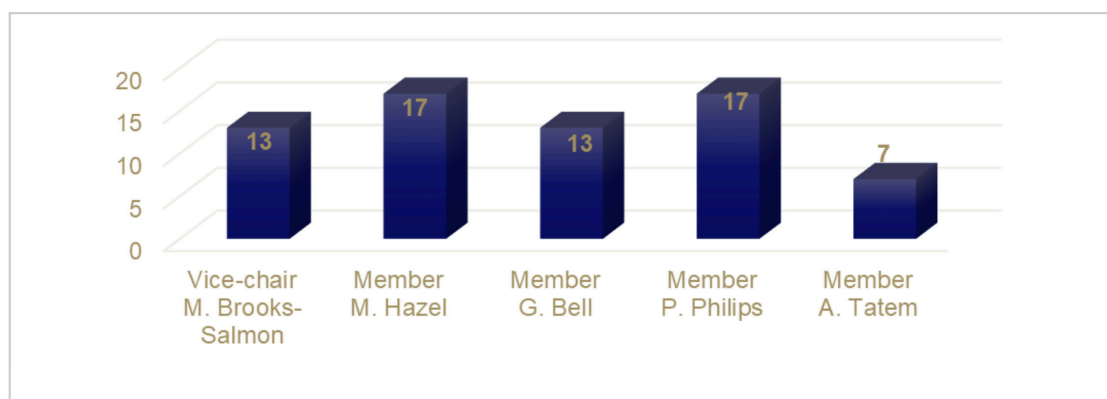
A total of 19 meetings were held during the year 2019, of which 16 were regular meetings, 1 was an urgent meeting and 2 were extraordinary meetings chaired by His Excellency the Governor.

Council Meetings



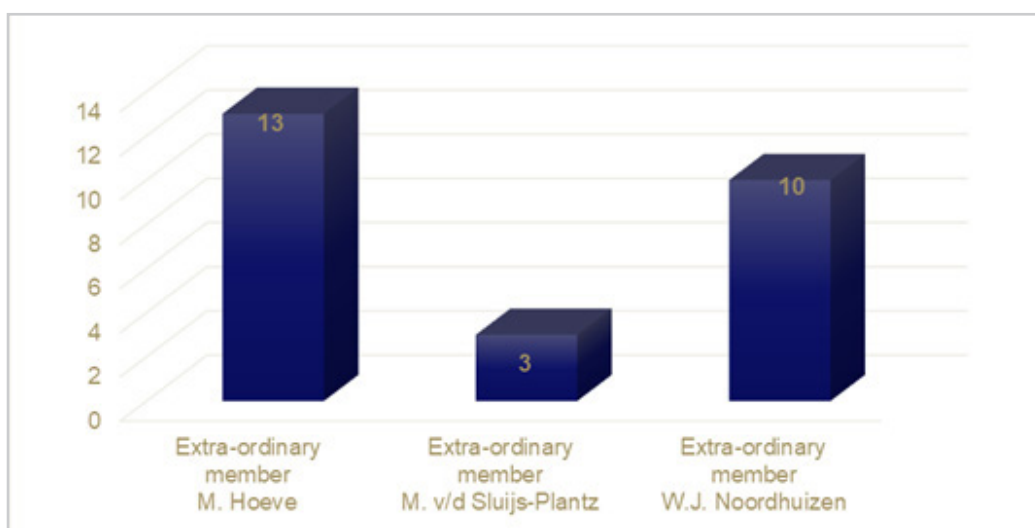
Below is an overview of the attendance of the members of the Council:

Attendance Council Memembers



Below is an overview of the attendance of the extraordinary members of the Council:

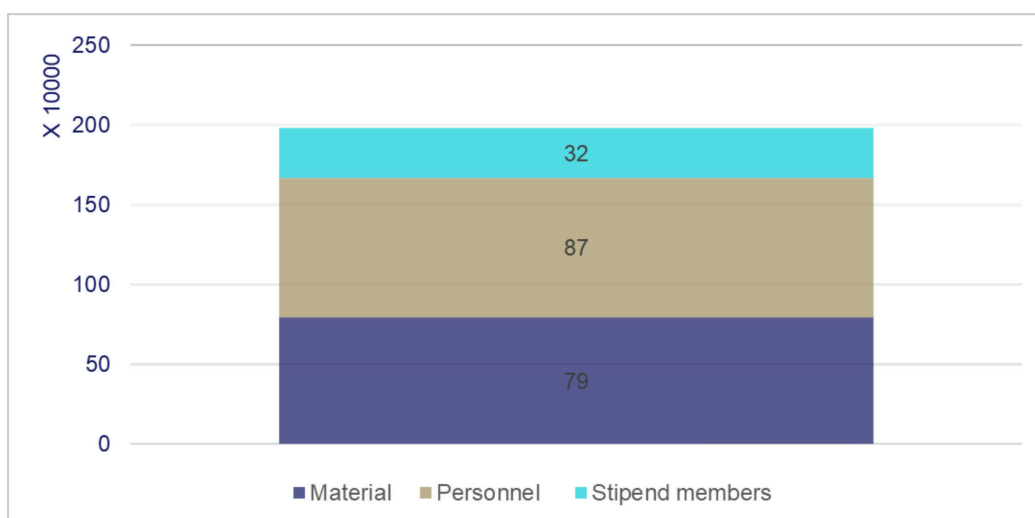
Attendance Extraordinary Members



3.4 Expenditures

The total cost of advising by the Council was budgeted in 2019 at **NAf**1,983,000.00.

Expenditures



4. THEME: NATIONAL BUDGET ORDINANCES

1. INTRODUCTION

Each year, the Council of Advice elaborates a thematic piece in its annual report on a subject that formed the common thread of the draft-laws submitted to it in that year. In calendar year 2019, advice was given at four different times about the adoption or amendment of a national ordinance establishing the budget of the Country². This edition will look

back on this subject in general terms, repeating some of the Council's comments in the context of promoting the budgetary cycle.

2. A SELECTION OF THE ADVICES ISSUED

The legal framework with which the budget must comply is formed by legal regulations of different rank. These regulations form the legal framework with which the budgetary ordinances must comply.

“The national ordinance establishing the budget, and the accompanying explanatory notes, must in its entirety comply with the provisions and the requirements included in the Financial Supervision Law, the Constitution and the National Accountability Ordinance. [...]”.


Practice has shown that compliance with the norms resulting from these regulations still falls short in important aspects. One of the most striking omissions in the budgetary ordinances is the lack of a so-called multi-year budget.

“As a result of Article 13 of the National Accountability Ordinance a multi-year budget is an obligatory part of the budget. By means of this multi-year budget, the effects of policy can be worked out over several years, since these are after all not limited to one governing year. The second paragraph of the aforementioned article states that the multi-year budget must correspond as closely as possible to the system of the submitted budget and must be accompanied by an explanatory note.

The estimates are listed for the regular service at least according to economic categories and for the capital service, they are stated per estimated investment and credit. [...]”.

The Council also considered the different procedures for establishing a budget in the event of a budget deficit. In that case, the norms indicated by the Financial Supervision Law (Rft) are not met.

² RvA SM/01-19-NO; RvA SM/03-19-ILV; RvA SM/04-19-NO en RvA SM/06-19-NO.



“When there is a budget deficit and the government submits a request to the Kingdom Council of Ministers to apply Article 25 of the Rft due to special circumstances, experience gained in 2019 has shown that a different time schedule must be taken into account. In the case of a legislative process where, after the request for application of Article 25 of the Rft has been discussed by the Kingdom Council of Ministers, the draft budget must be amended by the government before submission to Parliament in order to meet the conditions set by the Kingdom Council of Ministers, the Council’s role as a final adviser has been jeopardized.

In this context, the Council points out to the government that advice by the Council takes place before submission to Parliament, in view of the Council’s role as the last adviser. This means that the Council should only issue an advice after all other advice on the subject has been obtained and processed. [...]”

An adopted budget is also subject to change. Both government and Parliament can propose budget amendments. In that regard, the Council noted that careful consideration should be given to both the timing and nature of those changes.

“Article 49 of the National Accountability Ordinance prescribes that there are three fixed moments at which budget amendments by the government take place, namely at the same time as the implementing memoranda are presented. In addition, a Member of Parliament can introduce an initiative national ordinance to amend the budget on the basis of Article 85 of the Constitution.

When looking at the legal system, the Council is of the opinion that the further in the year changes are made to a budget, the more realistic and anchored in the feasibility these changes have to be. Changes towards the end of the current service year should be limited to technical changes as much as possible.”

Not only the quality of the national ordinances establishing the budget, but also any memoranda of amendment, which are often drawn up under great time pressure, must be adequate. The Council has also drawn attention to this.

“The Council also notes a very large number of legal, legislative and editorial shortcomings in this memorandum of amendment. The Council believes that in this case a legislative quality review by the Legal Affairs & Legislation Division could have helped to correct some of these deficiencies at an earlier stage. More generally, the Council considers it desirable to allow legislative products to go through the usual procedure as this increases the overall quality of legislation. The Council asks the government not to underestimate the added value of such an assessment in advance and to take this into account during the preparation phase. [...]”

Finally, in its advice, the Council referred to the national ordinances establishing the annual accounts of the Country. After all, the annual accounts form the final part of the budget cycle. In practice, a backlog has arisen in the preparation of the country’s annual accounts. The Council has repeatedly emphasized the importance of drawing up the annual accounts.

“Pursuant to the National Accountability Ordinance, the budget cycle does not only consist of drawing up and implementing the budget, but also of accountability for it. This is a continuous process that is coordinated and monitored by the Minister of Finance³.

The National Accountability Ordinance contains various procedural provisions for this cycle, which also contain data. In the context of the budget cycle, great value is also attached to the annual accounts. [...]”

Due to the absence of these annual accounts, an important source of information is missing that, together with the accompanying explanatory notes, provides insight into both the financial position of the Country and the income and expenses of the public sector. [...]”

For the sake of sound financial management, the Council therefore advises to comply with Chapter 4 of the National Accountability Ordinance. As a result, not only Parliament, but also the residents of Sint Maarten, gain more insight into the [actual] financial situation of the Country and the public sector.”

“It is generally known that for the Council’s advisory role it is necessary to have the annual accounts(s), which, together with the accompanying explanatory notes, are an important source of information. Due to the absence of approved annual accounts, a thorough insight into both the financial position of the Country and the income and expenses of the public sector is lacking. This makes it difficult to place, analyze and assess the draft budget within a correct financial-economic context. In addition to not having the annual accounts for a number of years, the Council also does not have any other forms of control information with regard to, among other things, the realized expenditure and revenue of the Country. [...]”

3. CONCLUSION

There is continuous work being done on improving the country’s financial management and thus also on the implementation of the budget cycle. There were many things to note with regard to the budgets for the 2019 and 2020 service years. There is still room for improvement, both procedurally and substantively.

The coming years will tell whether the bottlenecks identified by the Council will lead to the necessary investments in promoting financial management and compliance with the applicable legal framework.

³ See the general section of the explanatory memorandum belonging to the National Accountability Ordinance.

5. Annexes

5.1 ANNEX 1 – SECONDARY ACTIVITIES OF THE MEMBERS in 2019

MEMBER	SECONDARY ACTIVITIES
Mrs. Mavis Brooks-Salmon LL.M. MA (Vice-chair and also member)	<ul style="list-style-type: none"> - Director children Catholic choir - Harbour View Owners Foundation - Now Generation Committee
Ms. Marcella Hazel, MA (Member)	<ul style="list-style-type: none"> - Official translator by Federal Decree - Advisor of the Community Council of South Reward
Mr. Rik Bergman LL.M. (Member)	<ul style="list-style-type: none"> - Partner/Attorney at Law/Mediator at BSZE Attorneys at Law/ Tax Lawyers St. Maarten - Chairman of the Supervisory Board of Directors of Fabro Houdstermaatschappij B.V. d.b.a. Visser Pharma Group - Board member of de University of St. Martin - Board member of the Parkinson's Foundation Sint Maarten - Member of the Disciplinary Board of Lawyers Sint Maarten - Member of the St. Maarten Bar Association - Board member of the "Behoud Fortkerk Curaçao" Foundation
Ms. Patricia Philips, LL.B. (member)	<ul style="list-style-type: none"> - Owner of APAS; - Board member of the Foundation for Advancement in Law - Board member of the Chuchubi Foundation; - Member 'Cradle Roll Secretary' Philipsburg Methodist Church - Financial Administrator Philips-burg Methodist Church
Mr. Alphaeus Tatem MF. Acc. (member)	<ul style="list-style-type: none"> - Member and treasurer of the Philipsburg Seventh Day Adventist Church - Board member of the North Caribbean Conference of Seventh-day Adventist in het Caribbean area - Trustee of the SDA Foundation of Churches - Member of the Schoolboard of the St. Maarten Seventh-Day Adventist School - Treasurer of the ADRA (Adventist Development and Relief Association)
Ms. Melinda Hoeve LL.M. (Extraordinary member)	<ul style="list-style-type: none"> - Board member of the St. Maarten Lions Club - (Substitute) member of the Disciplinary Board of Attorneys - Board member of the Mental Health Foundation
Mrs. Maria Van der Sluijs-Plantz LL.M. (Extraordinary member)	<ul style="list-style-type: none"> - State Councilor at the Council of State of the Kingdom on behalf of Sint Maarten - Board member of Smallsteps Day-care - Industry Specialist at JZ International - Member of the Board of trustees/ Chairperson Audit Committee van het KNCV Tuberculosis Foundation - Board member of Telefonica Europe B.V. - Member of the Salon - Foundation Donors Concert Hall Orchestra

Mr. Willem Jan Noordhuizen, LL.M. (Extraordinary member)	<ul style="list-style-type: none"> - Chairman of the Foundation for Postgraduate Education for Legal Professionals - Lecturer in Civil Law at the University of Aruba - Co-founder and member of the editorial for Kluwer Dutch Jurisprudence magazine. - Member of the Supervisory Board for the Legal Profession Sint Maarten and Aruba
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5.2 ANNEX 2 – ESTABLISHED DICTA

DICTA OF THE COUNCIL OF ADVICE

The Council uses a final formal statement (dictum) at the end of proposed draft legislation. Depending on the observations made by the Council in its advice, the Council can advise one of the following dicta to government, concerning draft ordinances and draft decrees containing general measures.

I. Draft national ordinance

1. To send the draft ordinance to Parliament.

The Council does not have any substantial remarks, the so called blank advice.

2. To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.

With this dictum, the Council wants to say that it has no serious objections to the draft and that it advises only a few amendments to the draft national ordinance itself and/or the explanatory notes.

3. To send the draft ordinance to Parliament after the observations of the Council have been considered.

With this dictum, the Council wants to say that it has no serious reservations but does have objections to one or more parts of the draft national ordinance.

4. Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.

This dictum is used if the Council has major objections to one or more parts of the draft. These objections can usually be overcome by adapting the draft national ordinance.

5. Not to send the draft national ordinance to Parliament in this manner.

This dictum is used when the Council has fundamental objections, which can only be overcome by drastic amendment of the draft national ordinance.

6. Not to send the draft ordinance to Parliament.

Harshest conclusion.

II. Draft national decree, containing general measures

1. To adopt the draft decree, containing general measures.

The Council does not have any substantial remarks, the so called blank advice.

2. To adopt the draft decree, containing general measures after attention has been given to the observations of the Council.

With this dictum, the Council wants to say that it has no serious objections to the draft and that it advises only a few amendments to the draft decree containing general measures itself and/or the explanatory notes.

3. To adopt the draft decree, containing general measures after the observations of the Council have been considered.

With this dictum, the Council wants to say that it has no serious reservations but does have objections to one or more parts of the draft decree containing general measures.

4. Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered.

This dictum is used if the Council has major objections to one or more parts of the draft. These objections can usually be overcome by adapting the draft decree containing general measures.

5. Not to adopt the draft decree containing general measures in this manner.

This dictum is used when the Council has fundamental objections, which can only be overcome by drastic amendment of the draft decree containing general measures.

6. Not to adopt the draft decree, containing general measures.

Harshest conclusion.

III. Draft Initiative ordinances

Advices on draft initiative ordinances do not have dictums. In this case the Council gives a brief summarizing conclusion.

