



Council of Advice
Raad van Advies

ANNUAL REPORT

Strengthening Our
Democracy

2020



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,

Before you, lies the 2020 year report of the Council of Advice. In this report you will be privy to an overview of the advice requests received, the advices that were issued by the Council, as well as among other things, the working methods of the members and the Secretariat of the Council in the past year.

The theme for this year's report is the Regulatory response to the Coronavirus crisis (Part I). As one of the direct results of the crisis, the Government has had to implement a number of emergency legislation. In the theme this year, the Council gives an explanation on the legal framework within which these emergency legislations were established.

Much like everyone else, the Council was also affected by the Coronavirus crisis. The Council has had to switch to hosting its meetings to digital platform for the majority of the year and the Secretariat has had to partially work from home based on adjusted schedules.

In the past year, the Council received 16 advice requests and issued 17 advices. The Council also adjusted and approved the adjustments of its Rules of Order, of which the approved version is attached to this year report.

Regretfully, the Council also experienced the great loss of its Vice-Chair, Mrs. Mavis Brooks-Salmon. In this year report, the Council pays special homage to the late Mrs. Brooks-Salmon for her enormous contribution to the Council.

The Council also said goodbye to Ms Marcella Hazel as a member and acting Vice-Chair of the Council in 2020, while a member has moved from Extraordinary member to Member of the Council of Advice.

Finally, as (acting) Vice-Chair, I would like to express my gratitude for the good cooperation we experience among the Councils of the Kingdom of the Netherlands, and the members of the Council, the Secretary Director and the Secretariat for their valuable cooperation during the past unusual year.

Ms. Melinda N.A. Hoeve, LL.M.

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

(April 2021 – April 2022)





IN MEMORIAM: DRS. MAVIS C.C. BROOKS-SALMON, LL.M

In this section, the Council of Advice would like to memorialize its highly esteemed former Vice-chair, the late Mrs. Mavis Brooks-Salomon.

With deep sadness, Mrs. Brooks-Salomon transitioned on January 9, 2020 after a lengthy brave fight. The Council was extremely hopeful of a full recovery.

Mrs. Brooks-Salomon was appointed as the first Vice-Chair of the Council of Advice since its establishing in 2010. The Council is forever grateful to have been able to experience her candor, passion and wisdom for so long. As Vice-Chair of the Council of Advice, she applied her teaching skills and left no stone unturned, where she together with the Council and members of the Secretariat, formed and developed the Council of Advice into what it is today.

We fondly remember her steady contribution to the Council of Advice.



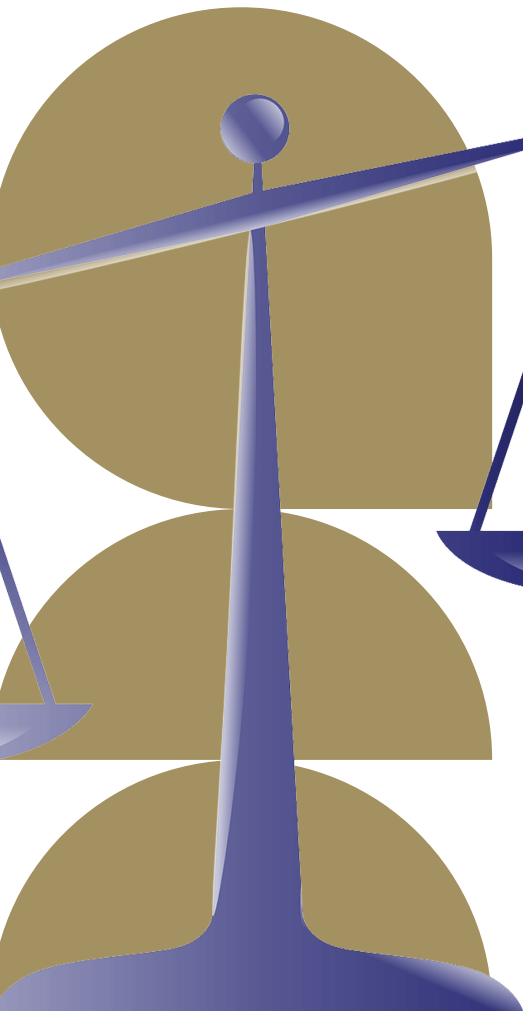


2.

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.

2.1 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.

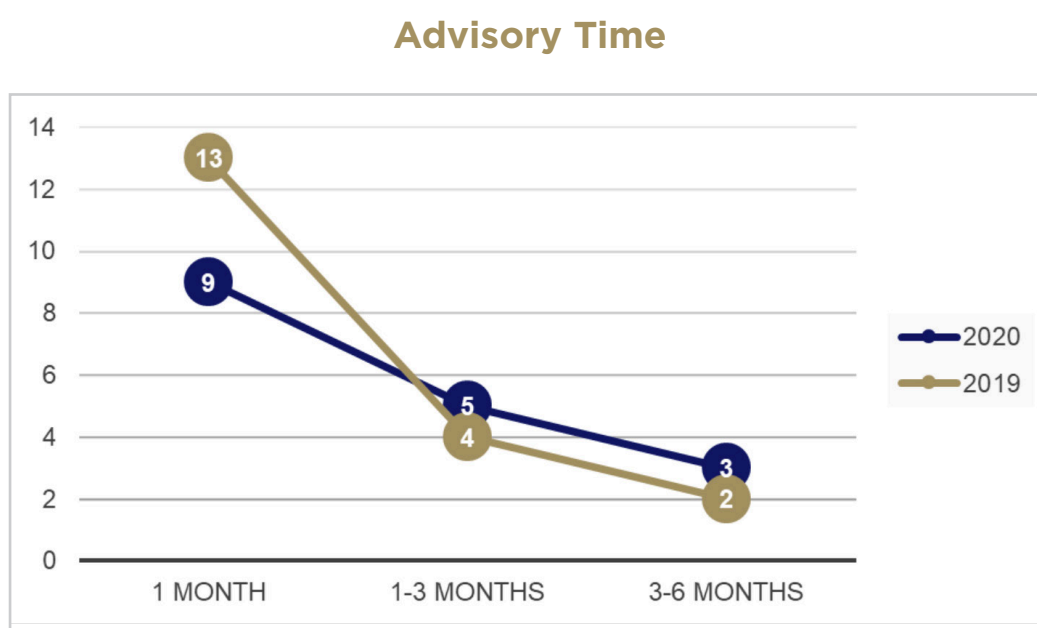
This assessment is effectuated on the basis of the Instructions for regulation of Sint Maarten and the Guidelines for the realization of legislation and regulation for Sint Maarten.

2.2 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 requests of the government or Parliament and the workload of 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 advices.

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 2020 would be the following:



2.3 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.



3.

OPERATIONAL MANAGEMENT OF THE COUNCIL OF ADVICE

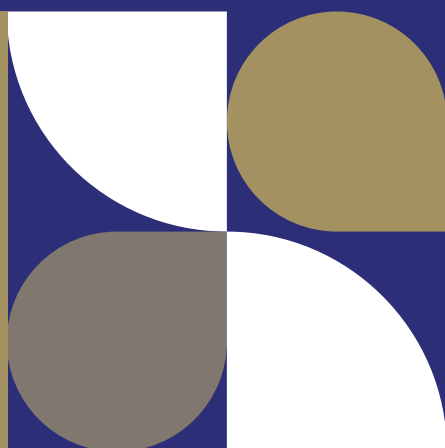
3.1 COMPOSITION OF THE COUNCIL OF ADVICE IN 2020

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, 2020 was as follows:

Chair:	His Excellency, the Governor of Sint Maarten drs. E.B. Holiday
Vice chair, also member:	Mrs. Mavis Brooks-Salmon LL.M. MA
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.



The composition of the Council of Advice as per December 31, 2020 was as follows:

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

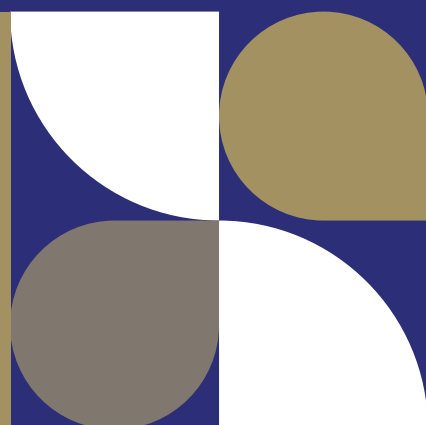


Figure 1 - Farewell Ceremony of Ms. Marcella Hazel in the presence of His Excellency the Governor, drs. E.B. Holiday on December 16, 2020.

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

3.2 COMPOSITION OF THE SECRETARIAT IN 2020

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. The secretariat also encourages contacts with other institutions/ advisory bodies.

The composition of the secretariat of the Council of Advice as per January 1, 2020 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

The composition of the secretariat of the Council of Advice as per December 31, 2020 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

3.3 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 its library, which is supplemented as much as possible with current literature, the Council strives to ensure

that its members and staff of the Secretariat participate in a variety of trainings, courses and information sessions in as much as possible. Due to the COVID-19 pandemic however, the Council was less successful in this area. The Council managed to participate in the following events:

- Two employees took part in an Adobe Photoshop course in January;
- In February, a member of the Council attended a symposium in Curaçao themed “The importance of legislation and legislative lawyers”;
- The Acting Vice-Chair, a Legal Advisor and the Secretary Director attended a Zoom meeting in August about the draft national development vision of Sint Maarten;
- In December, the members participated in a virtual meeting with the Council of Advice of Aruba and Curaçao and the Council of State in the Netherlands. During said meeting various aspects of the COVID-19 pandemic were discussed, among other things.

3.4 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 2020 to the Minister of Finance and Parliament in accordance with the National Government Accounting Ordinance.

3.5 COMMUNICATION

The Council was unable to meet with the Council of Ministers and the President of Parliament for the annual meetings due to the COVID-19 pandemic. Prior to the outbreak, the Council met with the Integrity Chamber in January. During this introductory meeting, the Integrity Chamber shared its role, purpose and vision with the Council. The acting Vice-Chair and the Secretary Director also gave a presentation to Parliament in February for the Orientation week that is held for the incoming parliament Members of Parliament. The presentation highlighted the legal framework and tasks of the Council of Advice and also the recent developments within the Council.



On December 3, 2020, the Council of Advice through its Chairman, H.E. drs. Eugene B. Holiday, unveiled “The Gallery of Recognition”. The “Gallery of Recognition” was initiated in light of honoring the late Mrs. Brooks-Salmon, former Vice-chair of the Council and all whom worked alongside her as well as those that currently work with the Council. The unveiling and upkeep of the “Gallery of Recognition” has been established through an internal policy.

The public can stay up to date on all important information, events and opinions of the Council via the website of the Council www.councilofadvicexm.com. 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.

3.5.1 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.

4.

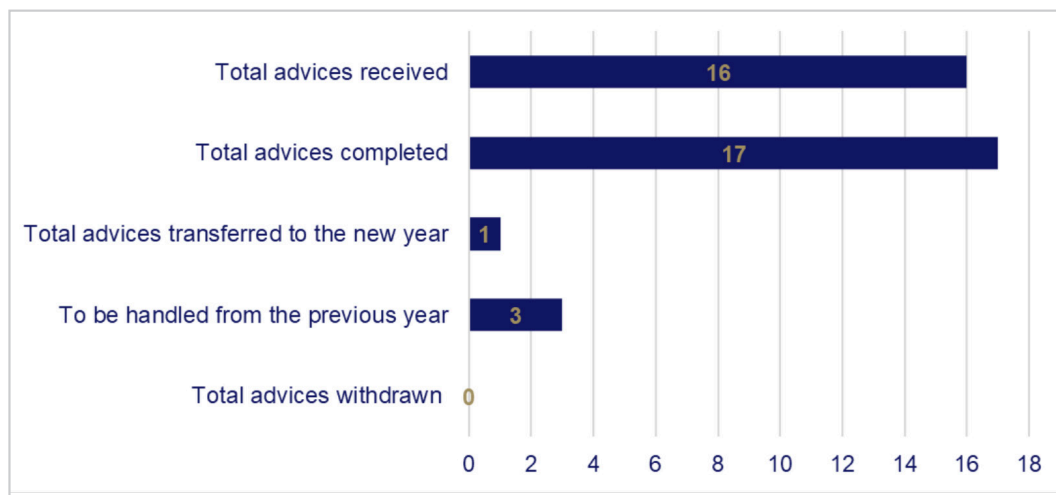
OUTPUT OF THE COUNCIL OF ADVICE



4.1 ADVICE REQUESTS AND ADVICES

The following is a chart and an overview of the request for advices for the year 2020:

Advice requests and advices rendered 2020



GOVERNMENT

CoA ref. nr.	Subject
SM/01-20 NO	National Ordinance amending the National Ordinance Registration and Finances of Political parties in connection with the cancellation of the audit function of the General Audit Chamber as it pertains to the financial data of political parties.
SM/02-20 NO	National Ordinance stipulating the Budget for Country Sint Maarten for the service year 2020 (National Ordinance Budget 2020).
SM/03-20 NO	National Ordinance containing amendments of the National Ordinance on General Old-Age Insurance and the National Ordinance on General Widows' and Orphans' Insurance in connection with the increase of the old-age pension and the retirement age to 65 years.
SM/04-20 NO	National Ordinance amending the National Ordinance General Audit Chamber, the National Ordinance Constitutional Court, the National Ordinance Ombudsman and the National Ordinance Council of Advice in connection with the re-raising of the age limit of the members.
SM/05-20 NO	National Ordinance establishing the annual financial statements of Sint Maarten for the year 2016.
SM/06-20 NO	Temporary National Ordinance amending the National Ordinance on the Remuneration of Political authorities, the Compensation policy on Travel and Accommodation Expenses of the Council of Ministers and the Compensation policy on Travel and Accommodation Expenses of Members of Parliament (URGENT).
SM/07-20 NO	Temporary National Ordinance reducing the vacation-allowances and the right to vacation hours, the non-granting of increases in remunerations and the reduction of the compensation for overtime for public servants as a result of the Dutch conditions attached to the second tranche of liquidity support to combat the consequences of the Covid-19 pandemic (URGENT).

GOVERNMENT	
SM/08-20 NO	Temporary National Ordinance establishing the rules regarding the remuneration maximum and the adjustment of the employment conditions for (semi) public sector entities (URGENT)

GOVERNMENT	
CoA ref. nr.	Subject
SM/01-20 ND	National Decree amending the decree on the Legal position of the Sint Maarten Police Force in connection with the implementation of new salary scales.
SM/03-20 ND	National Decree, containing general measures, of the implementation of Article 3, first paragraph, of the National Ordinance on Admission and Expulsion.
SM/04-20 ND	National Decree, containing general measures, of the general (construction) technical regulations for the construction and demolition of construction works as referred to in Article 19 of the Building and Housing Ordinance.
SM/05/19 ND	National Decree, containing general measures, repealing the Decree on the Legal position of the Police Force of the Netherlands Antilles 2000.
SM/06/19 ND	National decree, containing general measures, amending the Electoral Decree in connection with the adjustment of the remuneration of the Chairperson, members and extraordinary members of the Central Voting Bureau.

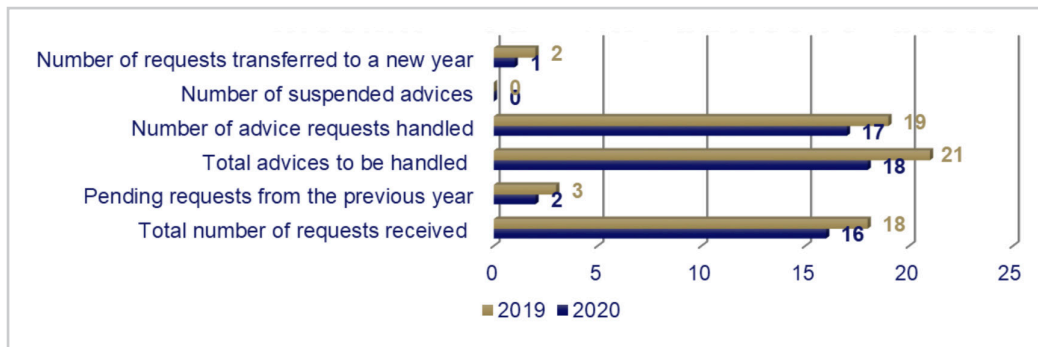
KINGDOM LAW	
CoA ref. nr.	Subject
SM/01-20 RW	Kingdom Law amending the Kingdom Law on Dutch nationality to provide a basis for assessment in relation to the principle of proportionality in cases where Dutch nationality has been legally lost.
SM/02-20-RW	Kingdom Law declaration that there are grounds to consider a proposal to amend the Constitution in the provision on the appointment of the members of the Supreme Court of the Netherlands.

AMvRB	
CoA ref. nr.	Subject
SM/01-20 AMvRB	General Measure of the Kingdom containing amendments of the Decree on passport fees in connection with the adjustment of the rates as of January 1, 2021. (URGENT).

DIV	
CoA ref. nr.	Subject
SM/01-20 DIV	Request for advice with some legal questions regarding the constitutional status of Sint Maarten.
SM/04-20 DIV	Request for advice on the basis of Article 69, 5th paragraph of the Constitution (URGENT).

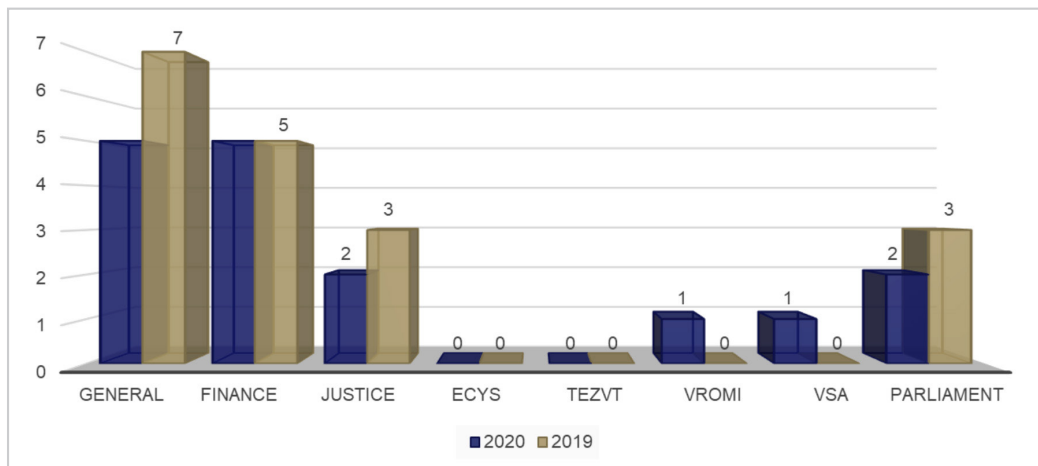
At the end of the year 2020 there was 1 advice requests that was pending. This advice was transferred to the new year.

Incoming/Outgoing Advice Requests



The below chart reflects an overview of advice requests received in 2020 divided per ministry (including draft initiative laws of Parliament):

Advice Per Ministry



Below is an overview of the advices issued in 2020:

#	SUBJECT	DICTUM
GOVERNMENT		
1	National Ordinance amending the National Ordinance Registration and Finances of Political parties in connection with the cancellation of the audit functionality of the General Audit Chamber as it pertains to the financial data of political parties. Reference: SM-01-20 NO Advice: 18-Feb-20	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 2020 (National Ordinance Budget 2020). Reference: SM-02-20 NO Advice: 31-Mar-20	Not to send the draft ordinance to Parliament.
3	National Ordinance containing amendments of the National Ordinance on General Old-Age Insurance and the National Ordinance on General Widows' and Orphans' Insurance in connection with the increase of the old-age pension and the retirement age to 65 years. Reference: SM-03-20 NO Advice: 19-Jun-20	To send the draft ordinance to Parliament after the observations of the Council have been considered.
4	National Ordinance amending the National Ordinance General Audit Chamber, the National Ordinance Constitutional Court, the National Ordinance Ombudsman and the National Ordinance Council of Advice in connection with the re-raising of the age limit of the members. Reference: SM-04-20 NO Advice: 1-Dec-20	To send the draft ordinance to Parliament after the observations of the Council have been considered.
5	National Ordinance establishing the annual financial statements of Sint Maarten for the year 2016. Reference: SM-05-20 NO Advice: 3-Nov-20	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.
6	Temporary National Ordinance amending the National Ordinance on the Remuneration of Political authorities, the Compensation policy on Travel and Accommodation Expenses of the Council of Ministers and the Compensation policy on Travel and Accommodation Expenses of Members of Parliament (URGENT). Reference: SM-06-20 NO Advice: 1-Dec-20	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.

#	SUBJECT	DICTUM
7	<p>Temporary National Ordinance reducing the vacation-allowances and the right to vacation hours, the non-granting of increases in remunerations and the reduction of the compensation for overtime for public servants as a result of the Dutch conditions attached to the second tranche of liquidity support to combat the consequences of the Covid-19 pandemic (URGENT).</p> <p>Reference: SM-07-20 NO Advice: 15-Dec-20</p>	To send the draft ordinance to Parliament after the observations of the Council have been considered.
8	<p>Temporary National Ordinance establishing the rules on the remuneration maximum and the adjustment of the employment conditions for (semi) public sector entities (URGENT).</p> <p>Reference: SM-08-20 NO Advice: 29-Dec-20</p>	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.

GOVERNMENT		
1	<p>National Decree, containing general measures, repealing the Decree on the Legal position of the Police Force of the Netherlands Antilles 2000.</p> <p>Reference: SM-05-19 ND Advice: 11-Aug-20</p>	To adopt the draft decree, containing general measures.
2	<p>National decree, containing general measures, amending the Electoral Decree in connection with the adjustment of the remuneration of the Chairperson, members and extraordinary members of the Central Voting Bureau.</p> <p>Reference: SM-06-19 ND Advice: 4-Feb-20</p>	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council.
3	<p>National Decree amending the decree on the Legal position of the Sint Maarten Police Force in connection with the implementation of new salary tables.</p> <p>Reference: SM-01-20 ND Advice: 1-Sep-20</p>	Not to adopt the draft decree containing general measures in this manner.
4	<p>National Decree, containing general measures, of the implementation of Article 3, first paragraph, of the National Ordinance on Admission and Expulsion.</p> <p>Reference: SM-03-20 ND Advice: 6-Oct-20</p>	Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered.

KINGDOM LAW/AMvRB		
1	Kingdom Law amending the Kingdom Law on Dutch nationality to provide a basis for assessment in relation to the principle of proportionality in cases where Dutch nationality has been legally lost. Reference: SM-01-20 RW Advice: 4-Feb-20	In conclusion, the Council suggests that the Government agree to the Kingdom Law proposal.
2	Kingdom Law declaration that there are grounds to consider a proposal to amend the Constitution in the provision on the appointment of the members of the Supreme Court of the Netherlands. Reference: SM-02-20 RW Advice: 11-Aug-20	
3	General Measure of the Kingdom containing amendments of the Decree on passport fees in connection with the adjustment of the rates as of January 1, 2021. (URGENT). Reference: SM-01-20 AMvRB Advice: 15-Sep-20	In conclusion, the Council suggests that the Government approve the present draft General Measure of Kingdom and the explanatory notes.
DIV		
1	Request for advice with some legal questions regarding the constitutional status of Sint Maarten. Reference: SM-01-20 DIV Advice: 11-Aug-20	
2	Request for advice on the basis of Article 69, 5th paragraph of the Constitution (URGENT). Reference: SM-04-20 DIV Advice: 28-Jul-20	

Table 1 - Overview advices issued over the year 2020.



4.2 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 2020 the three most mentioned advisory comments were on the following aspects:

1. Financial paragraph

The 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. Retroactive effect

The remarks made concerned the insufficient explanation in the notes on the onerous or beneficiary policy. As a result, the principle of legal certainty precluded onerous and in certain cases also beneficial measures that would be introduced retroactively.

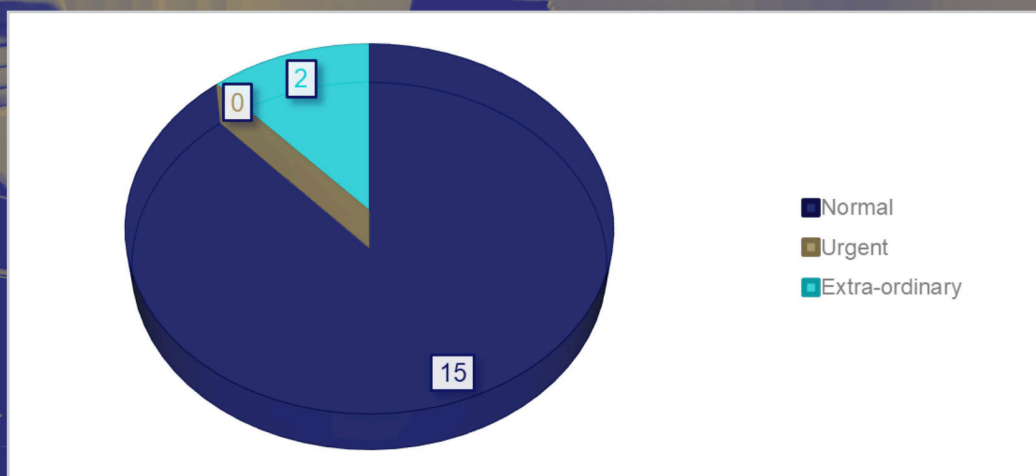
3. Legal certainty

The remarks made concerned the observation of insufficient respect for the legal position of citizens. In this context, reference was made to, among other things, the lack of clarity regarding the applicable regulations and the implementation of retroactive effect that violate the principle of legal certainty. The formal and substantive legal certainty was undermined.

4.3 MEETINGS

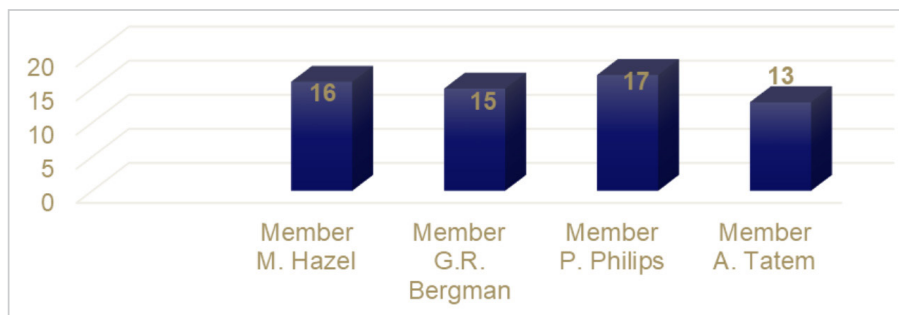
A total of 17 meetings were held during the year 2020, of which 15 were regular meetings, 0 were urgent meetings and 2 were extraordinary meetings chaired by His Excellency the Governor.

Council Meetings



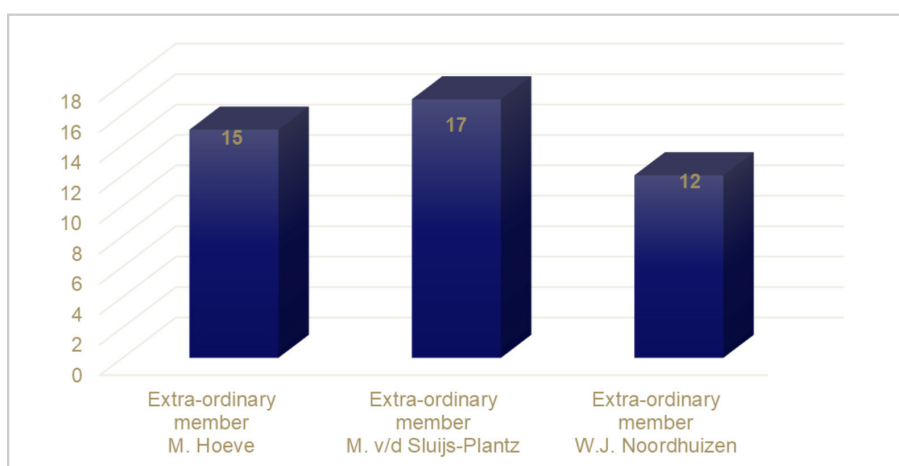
Below is an overview of the attendance of the members of the Council:

Attendance Council Members



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

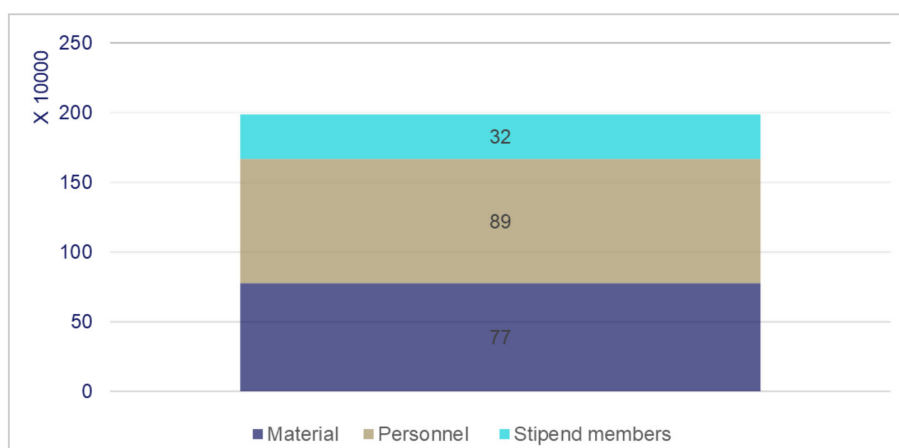
Attendance Extraordinary Members



4.4 Expenditures

The total cost of advising by the Council was budgeted in 2020 at **NAf** 1,984,136.00.

Expenditures





5.



THEME: THE REGULATORY RESPONSE TO THE CORONAVIRUS CRISIS (PART 1)

1. INTRODUCTION

Each year, the Council of Advice elaborates on a thematic piece in its year report based on a subject that formed the common thread in the draft-laws submitted to it in that year. Calendar year 2020 was an unusual year. By the end of the first quarter, the coronavirus crisis practically claimed almost all public attention and, to a large extent, seized the legislative apparatus. In this edition, the Council will present an explanation of the legal framework within which emergency regulations are established.

In particular, the Constitution of Sint Maarten, the National Ordinance states of emergency and the National Ordinance on Disaster Management will be discussed. The National Ordinance on the Resistance Forces and the National Police Ordinance are also important with regard to the maintenance of public order in the event of an unusual situation. However, these last two national ordinances will not be discussed in this edition.



2. FRAMEWORK FOR EMERGENCY REGULATION AT COUNTRY LEVEL

§ 2.1. Constitution

Article 112 of the Constitution of Sint Maarten (hereinafter: the Constitution) grants the formal legislator a general power to regulate a state of emergency¹. Special rules apply in a state of emergency. Because the situation is out of the ordinary, in such cases it is possible to deviate from a number of constitutional rights, including, for example, freedom of movement². This could include setting a curfew and closing borders.

When it comes to an out of the ordinary situation or a state of emergency - in the case of Sint Maarten - one can quickly think of the situation that arises after the passing of a severe hurricane. But, as has been shown in 2020, such a situation can also arise in the public health sphere.

The power to declare a state of emergency has been delegated to the government³. It is always up to the government to assess, based on the circumstances, whether it is permissible to declare a state of emergency. The law does, however, permanently grant Parliament the power to pass judgment on the government's decision to declare a state of emergency⁴. In this manner this power, which can have far-reaching consequences for the citizen, because of the possibility of deviating from a number of fundamental constitutional rights, is still somewhat restricted⁵.

§ 2.2. National Ordinance states of emergency⁶

The National Ordinance states of emergency regulates the declaration, enforcement and cancellation of a state of emergency. The powers that can be applied by the civil authorities are also laid down⁷. A state of emergency can be declared to maintain external or internal security and public order. It can be deduced from the term 'state of emergency' that there must be a situation in which normal societal life cannot proceed. In order to control and normalize such a situation, it may be necessary for the government or the civil authority⁸ to have powers that it does not have under normal circumstances. One could think of limiting the constitutional rights of citizens.

¹ For comparison, see article 103 of the Dutch Constitution.

² Article 112, second paragraph, of the Constitution.

³ Article 112, first paragraph, Constitution jo. Article 1, first paragraph, National Ordinance states of emergency.

⁴ Article 112, third paragraph, of the Constitution.

⁵ See Chapter 2, paragraph 6, of the Constitution.

⁶ AB 2010, GT no. 27.

⁷ Paragraph 2 of the National Ordinance states of emergency.

⁸ The attribution of powers to the civil authority must be distinguished from the attribution of civil powers to the military authority. The latter is regulated by Kingdom Law in accordance with Article 34 of the Charter for the Kingdom of the Netherlands. A further exploration of this form of attribution of powers would go too far here. This article focuses only on civil authority and does not consider military authority.

Declaring a state of emergency should not be confused with applying emergency legislation within a particular social sector, which can also be the result of an emergency situation⁹ that has arisen. Before the state of emergency was declared, measures were for example already taken at ministerial level¹⁰. Such sectoral emergency measures are not considered in this article, also not considered are the measures taken from within the Kingdom¹¹.

a. Extraordinary circumstances

In a state of emergency, there must be extraordinary circumstances that disrupt societal life to such an extent that there is no longer or can no longer be business as usual. The extraordinary circumstances must be such that the external or internal security of the country can no longer be maintained without attributing extraordinary powers to the civil authority. In that case, the government must have powers to cope with the situation¹².

The term 'external or internal security' is derived from the first paragraph of Article 112 of the Constitution and must be interpreted broadly¹³. Reasons that could lead to a state of emergency being declared are, for example, natural disasters, social unrest or a terrorist or military threat or external action. In the case of the corona crisis, the threat was posed by an external public health risk. In view of the broad scope for interpretation offered by the legislator, this phenomenon may also be considered a threat to external or internal security.

b. The consideration between respecting constitutional rights versus taking emergency measures in the light of general principles of good governance

After it has been judged that there is an extraordinary circumstance, as described above, which, in the opinion of the government, requires the declaration of a state of emergency, a continuous assessment must be made about the extent to which that circumstance necessitates the restriction of specific constitutional rights of citizens. In that assessment, account must also be taken of how citizens are expected to respond to this and what will be needed to be able to adequately enforce the restrictive measures¹⁴. Various general principles of good governance are therefore also involved in that decision-making¹⁵.

⁹ This can serve several purposes. Examples include combating 'hoarding behaviour' such as that which occurred in the United States with regard to the sale of toilet paper or temporarily granting powers to certain administrative bodies. In such cases, there is no question of a restriction of the fundamental rights of citizens, but of the application of special rules.

¹⁰ For example, the Regulation on opening and closing times for service companies of the Ministry of TEATT of March 23, 2020, which has been amended on March 30 and April 2, 2020 and the Temporary Regulation on Public Order Measures COVID-19 of the Ministry of Justice of March 29, 2020. These regulations were withdrawn with the declaration of the State of emergency.

¹¹ For a chronological overview of measures taken by the Kingdom in the period of March through June 2020, please visit: <https://www.rijksoverheid.nl/onderwerpen/caribische-deel-van-het-koninkrijk/materialen-coronavirus>

¹² The recommendation to establish the National decree wherein the state of emergency is declared, is made by the Prime Minister. This expresses that the declaration of a state of emergency is a matter of general government policy.

¹³ Explanatory Memorandum National Ordinance states of emergency, p. 10.

¹⁴ The relationship with Saint Martin (French territory) must also be taken into account. Consideration must be kept as unrest on one side of the island can affect the situation on the other side of the island. Cooperation and coordination with the French side is therefore always advisable.

¹⁵ To name a few: the principle of due care; the principle of legal certainty; the principle of proportionality and the principle of equality.

Articles 7 through 16 of the National Ordinance states of emergency contain the measures that the government can take during a state of emergency. These measures often infringe on constitutional rights such as freedom of expression, the right to assembly, the secrecy of correspondence, etc. In the case of the so-called corona lockdown, Article 11, first paragraph, part b, of the National Ordinance states of emergency is particularly relevant.

“During the period in which a state of emergency is in force, the order declaring this may provide that: [...] b. all persons are forbidden to use public roads, stop on public roads, to enter designated buildings, accommodations or sites, or to stay in the open air.”

°1 Proportionality and subsidiarity (principle of proportionality)

In principle, such measures restricting freedom should be handled with restraint. The principles of proportionality and subsidiarity must always be assessed. Proportionality may include the extent, frequency and duration of the measures to be taken, which must be attuned to the seriousness of the situation. For example, it is disproportionate to restrict freedom of movement to such an extent that (non-corona related) medical emergencies cannot be resolved by the designated emergency services.

Subsidiarity means that with each individual measure it must be considered whether it is necessary to continue for a longer period of time and whether this cannot be replaced by a less intrusive measure. In the context of subsidiarity, it should also be noted that, despite the fact that the state of emergency aims to protect the citizen, its indefinite continuation is not permitted. As soon as circumstances permit, the state of emergency, and with it the restriction on the constitutional rights of citizens, should be lifted. In order to guarantee this, a state of emergency falls under the supervision of Parliament¹⁶.

Furthermore, the inclusion of exceptions in the restrictive measures to be applied, as the government has done, fits perfectly within the idea of proportionality.

°2 Legal certainty

In order to ensure legal certainty, a state of emergency may not commence before the moment on which it is announced. After all, the public must know where it stands in an emergency situation.

This announcement is regulated in the national decree declaring the state of emergency. This makes it possible to act quickly in emergencies, for example by arranging that the announcement will not take place via the regular channels, but via other (media) channels such as radio and television.

¹⁶ Article 112, third paragraph of the Constitution.



“This national decree enters into force the day after its signing and will be announced in the Official Publication and published in available local media.”

Irrespective of the chosen form of publication, the national decree to declare a state of emergency will also have to be published in the Official Publication in order to emphatically emphasize its far-reaching character.

c. Legal consequences

Article 112, third paragraph, of the Constitution comes into effect with the declaration of the state of emergency. As long as the state of emergency is not lifted by national decree and whenever Parliament deem it necessary, they may decide on the continuation of the state of emergency. Parliament may also set a period until which the state of emergency ultimately may last.

With the declaration of the state of emergency, the government is empowered to take the measures as described in the National Ordinance states of emergency. In addition, except for Parliament, government can also lift the state of emergency by national decree¹⁷.

d. Financial implications

Declaring a state of emergency can have major financial consequences. The actions that have to be taken to be able to cope with the emergency situation can then have an unforeseen impact on the budget. Establishing an emergency fund to cover such unforeseen costs in such a case, is therefore recommended for in the future.

§ 2.3. National Ordinance on Disaster Management¹⁸ and the Sint Maarten disaster plan

It has been established above that in an emergency situation there are extraordinary circumstances that disrupt societal life to such an extent that there is no longer or can no longer be business as usual. The National Ordinance on Disaster Management does not refer to an emergency situation but to a disaster. That term is defined as follows:

“an event causing a serious disturbance of public safety, in which the life, health and well-being of many persons, the environment or major material interests are seriously threatened or damaged, and in which the coordinated deployment of services and organizations of different disciplines is required;”¹⁹

This shows that the state of emergency and a disaster are closely related. The state of emergency is linked to the protection of external/internal safety and a disaster to public safety. There is also an essential difference: where a state of emergency arises when extraordinary circumstances occur, in principle the disaster should have been thought about before. For example, the Minister of General Affairs is responsible for preparing for disaster relief. Noteworthy is that the National Ordinance on Disaster Management expressly focuses on medical assistance in the event of disasters.

¹⁷ The phrase in section b of Article 3 of the National Ordinance states of emergency: “as soon as circumstances, at the discretion of the Government, permit this”, expresses that the Government must, by virtue of its own responsibility, discontinue the State of emergency as soon as circumstances permit.

¹⁸ AB 2013, GT no. 7

¹⁹ Article 1, section a, National Ordinance on Disaster Management.

In addition, limiting and combating infectious diseases is explicitly included in the definition of ‘medical assistance’²⁰.

The National Ordinance on Disaster Management therefore forms the basis for a disaster plan for Sint Maarten to be established by means of a national decree containing general measures²¹. In that plan, it is worked out in general terms how to act in the event of a disaster, with the aim of effectively combating them from a technical-organizational standpoint.

When it is clear with regard to a disaster where, how and how bad it will be (location, nature and consequences are foreseeable), a disaster management plan for the disaster in question must be established by ministerial regulation. Such a special disaster management plan lists the measures taken in preparation for the response to the disaster in question (plan of measures for a specific disaster)²². For a more detailed overview of the disaster management framework, reference is made to the preface to the Sint Maarten disaster management plan.

One of the disaster types that could hit Sint Maarten according to the disaster plan is the epidemic²³. It is said that an epidemic generally occurs unannounced and is rare. Yet such an epidemic made its appearance in 2020. The disaster plan recognizes that the rate of development of the epidemic depends on the spreading mechanism, the contamination and the incubation period of the contamination. Based on this, it can be stated that in addition to declaring a state of emergency, a targeted approach can also be set up and implemented within the framework of the National Ordinance on Disaster Management to cope with a specific disaster situation. Once a disaster plan is available, the emphasis shifts from a regulatory to an implementary role.

This concludes part I of this thematic piece. Part II will follow in the Council’s year report of 2021.



²⁰ Article 1, section c, National Ordinance on Disaster Management.

²¹ Article 3, first paragraph, National Ordinance on Disaster Management

²² Article 4, first paragraph, National Ordinance on Disaster Management.

²³ Article 1.3, seventh paragraph, Disaster Plan Sint Maarten.



6.

Annexes

6.1 ANNEX 1 – SECONDARY ACTIVITIES OF THE MEMBERS IN 2020

MEMBER	SECONDARY ACTIVITIES
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 Houdster-maatschappij 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 Philipsburg 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 (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

6.2 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.

6.3 ANNEX 2 – RULES OF ORDER



AFKONDIGINGSBLAD VAN SINT MAARTEN

Jaargang 2020
No. 09

Reglement van Orde voor de Raad van Advies

DE RAAD VAN ADVIES,

Gelet op de artikelen 69 tot en met 73 van de Staatsregeling van St. Maarten (AB 2010, GT no. 1) jo. artikel 24 van de Landsverordening Raad van Advies (AB 2010, GT no. 17).

Heeft onderstaand reglement van orde vastgesteld:

Paragraaf 1. Begripsbepalingen

Artikel 1

In dit reglement wordt verstaan onder:

- A) Raad: de Raad van Advies;
- B) Landsverordening: de Landsverordening Raad van Advies (A.B. 2010, no. 17).

Paragraaf 2. Werkzaamheden van de Raad van Advies

Artikel 2

- 2.1 De Raad vergadert in principe twee keer per maand.
- 2.2 De vice-voorzitter roept de Raad bijeen zo dikwijls als hij dit nodig acht of als hij daarom door minimaal twee leden, met schriftelijke opgave van redenen, wordt verzocht.
- 2.3 De oproeping wordt, spoedeisende gevallen uitgezonderd, tenminste tweemaal vierentwintig uur voor het houden van de vergadering aan de leden bezorgd.
- 2.4 De in de vergadering te behandelen onderwerpen worden in de oproeping vermeld, tenzij een zaak geheimhouding vordert.

Artikel 3

- 3.1 De Gouverneur kan de Raad, zo dikwijls als hij dit nodig acht, in vergadering bijeenroepen. Hij heeft in die vergadering een raadgevende stem. 3.2 Artikel 7 lid 1 is van overeenkomstige toepassing in die gevallen.

AB 2020, no. 09

An official English translation of the Rules of Order is not yet available.

Artikel 4

- 4.1 De vergaderingen worden bijgewoond door de secretaris en/of de plaatsvervangende secretaris, tenzij de Raad in bijzondere gevallen anders oordeelt. De secretaris wordt bijgestaan door het secretariaat.
- 4.2 De secretaris heeft de leiding over het secretariaat en draagt zorg voor de implementatie van het beleid en de logistieke ondersteuning van de Raad.
- 4.3 De secretaris bereidt de vergaderingen en bijeenkomsten van de Raad voor en legt die vast.
- 4.4 De secretaris ondersteunt de Raad bij het opstellen van jaarplannen en jaarverslagen.
- 4.5 De secretaris is namens de vice-voorzitter belast met het personeel en het financieel beheer.
- 4.6 Bij verhindering of ontstentenis van de secretaris treedt de juridisch bestuursadviseur die belast is met het secretaris waarnemerschap in de plaats van de secretaris.

Artikel 5

- 5.1. De vice-voorzitter stelt de agenda vast. Tijdens de vergadering kan worden besloten dat de agenda wordt gewijzigd dan wel wordt aangevuld.
- 5.2 De rangorde voor de te behandelen stukken wordt bepaald aan de hand van de mogelijke spoedeisendheid en de datum van binnenkomst. Ten aanzien van ontwerpen van wettelijke regelingen wordt tevens rekening gehouden met de beoogde datum van inwerkingtreding.
- 5.3 Als spoedstukken worden in principe aangemerkt de adviesaanvragen waarvan door de voorzitter van de Staten, de minister-president of de ministerraad gemotiveerd een spoedbehandeling is gevraagd.

Artikel 6

- 6.1 De vice-voorzitter leidt de vergaderingen en handhaaft daarin de orde.
- 6.2 De vice-voorzitter ziet toe op de werkzaamheden van de Raad.
- 6.3 De vice-voorzitter kan de Raad in werkgroepen verdelen, welke elk betrekking heeft op een of meer ministeries.
- 6.4 De werkgroepen zijn belast met de voorbereiding van de behandeling van de adviesverzoeken in de Raad.
- 6.5 Bij verhindering of ontstentenis van de vice-voorzitter treedt het oudst aanwezige lid in zijn plaats. De rang van ouderdom van dienst van de leden wordt bepaald aan de hand van de dagtekening van het benoemingsbesluit en bij gelijktijdige benoeming, naar de orde waarin hun namen in het besluit zijn geplaatst.
- 6.6 Ieder lid dat verhinderd is een vergadering bij te wonen, geeft daarvan tijdig kennis aan de secretaris.

Artikel 7

- 7.1 In geval de vice-voorzitter zich tijdelijk buitenlands begeeft, geeft hij tevoren daarvan schriftelijk kennis aan de Gouverneur en de Raad met afschrift aan de secretaris.
- 7.2 In geval een lid zich buitenlands begeeft, geeft hij tevoren daarvan schriftelijk kennis door tussenkomst van de secretaris aan de vice-voorzitter.

Artikel 8

- 8.1 De werkzaamheden van de buitengewone leden omvatten:
 - a) het uitbrengen van preadviezen aan de Raad; en
 - b) het vervangen van ledenDe onderlinge verdeling van de werkzaamheden geschiedt door de vice-voorzitter.
- 8.2 De buitengewone leden wonen de vergaderingen bij welke worden gehouden tijdens hun optreden als lid-plaatsvervanger of telkens wanneer de vice-voorzitter hun aanwezigheid nodig acht.
- 8.3 De staatsraad van Sint Maarten in de Raad van State van het Koninkrijk is buitengewoon lid van de Raad en kan de vergaderingen van de Raad bijwonen.
- 8.4 In de artikelen 6.6, 7.2, 11.6, 13, 14, 15, 16, en 17 wordt, met inachtneming van het bepaalde in het vorige lid, onder leden mede buitengewone leden begrepen.

Artikel 9

- 9.1 De vergaderingen van de Raad worden met gesloten deuren gehouden.
- 9.2 Al hetgeen ter vergadering wordt besproken, alsmede het verslag of een gedeelte daarvan, is geheim, tenzij de vice-voorzitter of de Raad gehele of gedeeltelijke ontheffing van geheimhouding verleent.

Artikel 10

De Raad kan beslissen dat de vergadering geheel of gedeeltelijk wordt bijgewoond door externe deskundigen.

Artikel 11

- 11.1 Besluiten van de Raad worden genomen met meerderheid van stemmen en worden met redenen omkleed.
- 11.2 Het aantal leden, de vice-voorzitter daaronder begrepen, dat tot het vaststellen van een advies of tot het nemen van een besluit wordt gevorderd, bedraagt niet minder dan drie.
- 11.3 Besluiten inzake aangelegenheden die betrekking hebben op de Raad worden in een vergadering genomen waar alle leden aanwezig zijn.
- 11.4 Bij staking van stemmen beslist de stem van de vice-voorzitter. In het uit te brengen advies wordt van beide gevoelens melding gemaakt, indien de Raad van mening is dat dit in het algemeen belang is.

- 11.5 In geval van hoofdelijke stemming brengt de vice-voorzitter het laatst zijn stem uit.
- 11.6 Een lid is immer bevoegd een minderheidsstandpunt in te nemen en een afzonderlijk advies te overleggen, om te worden bijgevoegd aan het advies van de Raad. Dat lid is verplicht het afzonderlijke advies zo tijdig aan de secretaris ter hand te stellen, dat de inzending van het advies van de Raad daardoor geen vertraging ondervindt.
- 11.7 De vice-voorzitter en de secretaris kunnen door de vergadering worden gemachtigd om een advies of een besluit af te handelen conform het standpunt van de Raad.
- 11.8 Onverminderd de bevoegdheid van de vice-voorzitter zoals gegeven in artikel 19 van de Landsverordening kan de Raad bepaalde aangelegenheden ter voorbereiding toevertrouwen aan een lid of aan commissies uit zijn midden aangewezen, eventueel aangevuld met externe deskundigen. De vice-voorzitter treedt op als voorzitter van de commissies of wijst een voorzitter aan uit de leden van deze commissies.
- 11.9 Alle adviezen en besluiten van de Raad worden ondertekend door de vice-voorzitter en de secretaris.
- 11.10 Alle overige van de Raad uitgaande stukken wordt door de vice-voorzitter ondertekend.

Artikel 12

- 12.1 Van de vergaderingen van de Raad wordt door de secretaris een kort verslag gemaakt, dat tevens de namen bevat van degenen die de vergadering hebben bijgewoond, en dat, na in de eerstvolgende vergadering te zijn behandeld en vastgesteld, door de vice-voorzitter en secretaris wordt ondertekend.
- 12.2 Wordt een hoofdelijke stemming gehouden, dan wordt daarvan in het verslag melding gemaakt.

Paragraaf 3. De waarborging van de onpartijdigheid en onafhankelijkheid van de Raad

Artikel 13

- 13.1 De leden van de Raad vervullen geen ambten of functies waarvan de uitoefening ongewenst is met het oog op een goede vervulling van het lidmaatschap van de Raad of van het vertrouwen daarin.
- 13.2 Elk lid doet schriftelijk opgave aan de vice-voorzitter van zijn andere ambten of functies, al dan niet betaald, die hij bij zijn benoeming als lid vervult.
- 13.3 De vice-voorzitter doet schriftelijk opgave van zijn andere ambten of functies, al dan niet betaald, die hij bij of na zijn benoeming vervult aan het oudst benoemde lid van de Raad.

Artikel 14

- 14.1 De vice-voorzitter dan wel het betreffende lid van de Raad neemt geen deel aan de beraadslagingen en stemt niet mee, indien daardoor de onpartijdigheid en onafhankelijkheid van de Raad schade zou kunnen lijden of de schijn bestaat dat de onpartijdigheid en onafhankelijkheid van de Raad schade zou kunnen lijden. Het

betreffende lid neemt in een dergelijk geval geen deel aan de beraadslagingen.

- 14.2 De Raad kan in bijzondere gevallen beslissen dat een lid een vergadering geheel of gedeeltelijk niet kan bijwonen, indien hiervoor redelijke en billijke gronden voor bestaan. In een dergelijk geval ontvangt het betreffende lid een met redenen omklede schriftelijke kennisgeving tenminste 48 uur voor de desbetreffende vergadering van de Raad. In urgente en/of bijzondere gevallen kan de Raad beslissen om van de termijnstelling van 48 uur af te wijken.

Artikel 15

- 15.1 Als criteria voor de door de vice-voorzitter en de overige leden van de Raad uit te oefenen andere ambten of functies worden gehanteerd:
- a) het risico dat de vice-voorzitter of het lid zich dient te verschonen als gevolg van het andere ambt, functie of persoonlijke dan wel zakelijke belangen;
 - b) de mate waarin de organisatie of vergelijkbare organisaties waaraan het andere ambt of de functie verbonden is, belanghebbende is bij een adviesonderwerp;
- 15.2 De vice-voorzitter of in voorkomende gevallen de Raad toetst de nieuwe door het betrokken lid uit te oefenen andere ambten of functies aan de criteria, bedoeld in het eerste lid.

Artikel 16

- 16.1 Elk lid dat van oordeel is dat er sprake is van belangenverstrengeling bij zichzelf of bij een ander lid, brengt dit onder de aandacht van de vice-voorzitter.
- 16.2 In de gevallen dat er sprake is van belangenverstrengeling bij de vice-voorzitter, brengt het lid dit onder de aandacht van de Raad.

Artikel 17

- 17.1 De vice-voorzitter geeft zo spoedig mogelijk aan het betrokken lid schriftelijk te kennen of er in verband met de onpartijdigheid en onafhankelijkheid van de Raad al dan niet bezwaren bestaan tegen de uitoefening van het betreffende ambt of de functie door een lid dan wel het deelnemen aan de beraadslagingen en meestemmen van een lid over een adviesonderwerp. In dat geval wordt het betreffende lid gehoord door de Raad. Indien het de vice-voorzitter betreft geschiedt de in de vorige volzin bedoelde kennisgeving door het oudst benoemde lid. In dat geval wordt de vice-voorzitter gehoord door de Raad.
- 17.2 Indien de vice-voorzitter in verband met de onpartijdigheid en onafhankelijkheid van de Raad bezwaren heeft tegen de uitoefening van een ambt of functie door een lid dan wel het deelnemen aan de beraadslagingen en meestemmen van een lid over een adviesonderwerp en dit lid volhardt in de uitoefening van het betreffende ambt of de betreffende functie beslist de voltallige Raad.
- 17.3 Indien een lid in verband met de onpartijdigheid en onafhankelijkheid van de Raad bezwaren heeft tegen de uitoefening van een ambt of functie door de vice-voorzitter dan wel het

deelnemen aan de beraadslagingen en meestemmen van de vice-voorzitter over een adviesonderwerp en de vice-voorzitter volhardt in de uitoefening van het betreffende ambt of de betreffende functie beslist de voltallige Raad.

Artikel 17A

17A.1 De vice-voorzitter voldoet aan het volgende profiel.

I. Deskundigheid

De titel van meester in de rechten of het doctoraat in de rechtsgeleerdheid hebben en het beschikken over ruime aantoonbare juridische kennis en ervaring.

II. Kennis

- Het beschikken over ruime kennis en ervaring van zaken binnen een bepaald vakgebied of maatschappelijke sector (juridisch-beleidsmatig, educatief-sociaal/maatschappelijk of financieel-economisch); en
- Inzicht in het functioneren van de overheid.

III. Persoonlijke kwaliteiten en vaardigheden

- Academisch denk- en werkniveau en uitstekende beheersing van de Engelse en Nederlandse taal;
- Gevoel hebben voor het juridisch proces en oog hebben voor de juridische kwaliteit;
- Affiniteit met wetgeving en kennis van de wetgevingstechniek is een pré;
- Onafhankelijk kunnen functioneren en vanaf deze onafhankelijke positie een bijdrage kunnen leveren aan de totstandkoming van de oordeelsvorming en besluitvorming over de adviezen van de Raad van Advies;
- Gezaghebbend: leiding kunnen geven aan de Raad en boven de partijen kunnen staan;
- Sterk analytisch vermogen, moet kunnen verbinden, besluitvaardig en duidelijk zijn;
- Moet ervaring hebben met en inzicht hebben in vraagstukken op het gebied van constitutioneel recht, de wetgeving en de werking van bestuur en politiek;
- Oog voor maatschappelijke verhoudingen en;
- Verknocht zijn aan het land.

IV. Bijzondere eigenschappen en voorwaarden

- Maatschappelijke betrokkenheid en moet in staat zijn de Raad als boegbeeld naar buiten toe te vertegenwoordigen;
- Onbesproken gedrag;
- Doelgericht en proactief;
- Minstens 15 jaar senior managementervaring/ervaring in een adviserende rol;
- Bij voorkeur minimaal 5 jaar direct vooraf aan de benoeming niet actief werkzaam zijn geweest in de politiek. In ieder geval mag een politiek verleden geen vragen (meer) oproepen over de onpartijdige en onafhankelijke benadering van adviesaanvragen door de leden van de Raad van Advies; en
- Een samenbindende houding binnen de Raad van Advies.

17A.2 Bij het horen van de Raad voor de benoeming van de vice-voorzitter in de zin van artikel 3 landsverordening Raad van Advies, dient de Raad of een door deze aangewezen lid, aan de hand van het profiel van de vice-voorzitter en een persoonlijk gesprek, zich ervan te hebben verzekerd dat de kandidaten vanuit een leidinggevende rol passen binnen de vigerende samenstelling van de Raad.

17A.3 De leden en buitengewone leden voldoen aan het volgende profiel.

I. Kennis

- Het beschikken over ruime kennis en ervaring van zaken binnen een bepaald vakgebied of maatschappelijke sector (juridisch-beleidsmatig, educatief-sociaal/maatschappelijk of financieel-economisch); en
- Inzicht in het functioneren van de overheid.

II. Persoonlijke kwaliteiten en vaardigheden

- Academisch denk- en werkniveau en goede beheersing van de Engelse en Nederlandse taal;
- Gevoel hebben voor het juridisch proces en oog hebben voor juridische kwaliteit;
- Onafhankelijk kunnen functioneren en vanaf deze onafhankelijke positie een bijdrage kunnen leveren aan de totstandkoming van de oordeelsvorming en besluitvorming over de adviezen van de Raad van Advies;
- Onafhankelijk en neutraal;
- Sterk analytisch vermogen;
- Oog voor constitutionele verhoudingen; en
- Oog voor maatschappelijke en politieke verhoudingen.

III. Bijzondere eigenschappen en voorwaarden

- Maatschappelijke betrokkenheid;
- Onbesproken gedrag;
- Minstens 10 jaar senior managementervaring/ ervaring in een adviserende rol;
- Bij voorkeur minimaal 5 jaar direct vooraf aan de benoeming niet actief werkzaam zijn geweest in de politiek. In ieder geval mag een politiek verleden geen vragen (meer) oproepen over de onpartijdige en onafhankelijke benadering van adviesaanvragen door de leden van de Raad van Advies; en
- Een samenbindende houding binnen de Raad van Advies.

17A.4 Bij het doen van een aanbeveling aan de regering voor het vervullen van een vacature voor lid of buitengewoon lid van de Raad van Advies in de zin van artikel 3 landsverordening Raad van Advies, gaat de Raad van Advies na aan welke discipline, expertise of kennisprofiel binnen het werkveld van de Raad van Advies behoefte is.

Paragraaf 4. Slotbepalingen

Artikel 18

De vice-voorzitter zorgt ervoor dat dit reglement van orde in acht wordt genomen.

Artikel 19

Doet zich een aangelegenheid voor waarin niet is voorzien, dan neemt de vice-voorzitter dienaangaande een beslissing. Indien en voor zover zijn beslissing voor de Raad van belang is, doet de vice-voorzitter hetzij schriftelijk hetzij in een vergadering van de Raad mondeling daarvan mededeling aan de leden.

Artikel 20

De Raad wordt vertegenwoordigd door de vice-voorzitter en de secretaris gezamenlijk, tenzij in voorkomende gevallen de vice-voorzitter of de Raad anders beslist.

Artikel 21

De Raad brengt voor 1 juli van elk jaar een verslag uit van zijn werkzaamheden in het afgelopen jaar.

Artikel 22

De Raad evalueert voor 1 juli van elk jaar zijn eigen functioneren, zijn relatie met de secretaris en zijn extern functioneren. Tijdens deze vergadering bespreekt de Raad tevens het functioneren van de secretaris. Deze evaluaties zijn slechts bestemd voor intern gebruik van de Raad.

Artikel 23

23.1 De vice-voorzitter legt voor 1 mei een voorstel voor een jaarplan met een daarop gebaseerde begroting voor het komende jaar aan de Raad ter besluitvorming voor.

23.2 De vice-voorzitter of namens hem de secretaris legt aan het eind van elk begrotingsjaar verantwoording af aan de Raad terzake het op basis van de beheersovereenkomst met de regering gevoerde personeels- en financieel beheer.

Artikel 24

Dit reglement treedt in werking met ingang van de onderstaande datum.

Artikel 25

Dit reglement kan worden aangehaald als: Reglement van orde voor de Raad van Advies.

Aldus vastgesteld in de vergadering van 4 februari 2020,

De Secretaris

De plaatsvervangend
Vice-voorzitter

Dhr. mr. A.G. Baly

Mevr. M. Hazel, MA

Uitgegeven de *negende* maart 2020;
De Minister van Algemene Zaken
Namens deze,
Hoofd Afdeling Juridische Zaken & Wetgeving

