



Council of Advice
Raad van Advies

ANNUAL REPORT

Strengthening our Democracy

2021

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,

We present you with the annual report 2021 of the Council of Advice. In this report, we will showcase our overview of the advice requests received, the advices that were rendered by the Council and 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 annual report is the Regulatory response to the Corona crisis (Part 2). In this second contribution, which builds on the theme paper from the Council's 2020 annual report, the Council will expound on some of the so-called crisis arrangements.

In the past year, the Council received 25 advice requests and rendered 21 advices.

Some topics on which the Council has advised in the past year include:

- ▶ the draft National decree, containing general measures, amending the Justice organizational decree in connection with the replacement of the Justice function book and some other changes included in the appendix;
- ▶ the draft National Ordinance on Higher Education; &
- ▶ the draft Kingdom law containing rules on the establishment of the Caribbean body for Reform and Development (COHO)

The Council also held its annual meeting with the President of Parliament, the Prime Minister and other honorable ministers. Over the duration of the past year, and in accordance with Article 6 of the Rules of Procedure for the Council of Advice, the (acting) Vice-Chair function was filled by members Ms. Patricia Philips and Ms. Melinda Hoeve.

Finally, as Vice-Chair, I would like to express my gratitude for the good cooperation we experience with the Councils of the Kingdom of the Netherlands, and to the members of the Council and the Secretariat for their valuable cooperation.

Mrs. Genara C. Richardson-Nicolaas, LL.M.

Vice-chair of the Council of Advice St. Maarten

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.

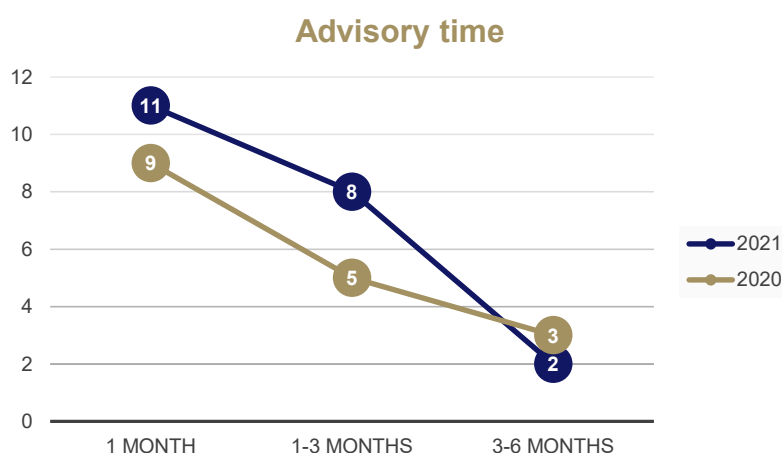


1.2 Advisory time

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 2020 would be the following:



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 2021

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, 2021 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. Mr. Alpheus Tatem, MF. Acc. Ms. Melinda Hoeve, LL.M.
Extraordinary members:	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, 2021 was as follows:

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

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

2.2 Composition of the secretariat in 2021

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, 2021 was as follows:

Secretary Director:	Mr. Ajamu Baly LL.M.
Legal advisor(s):	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, 2021 was as follows:

Secretary Director:	Mr. Ajamu Baly LL.M.
Legal advisor(s):	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 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. As a result of the budget cuts the Council was subject to, the Council was unable to achieve this in its full extent. Nonetheless, the Council managed to participate in the following events:

- A Legal Advisor attended a lecture in March entitled 'The precarious balance in the democratic rule of law'.
- A Legal Advisor obtained his admission (Civiel Effect) in November.
- The Secretary Director and a Legal Advisor attended a conference in December organized by the Minister of Finance and the Central Bank of Curaçao and Sint Maarten entitled 'Block Chain Conference – Building value with emerging technologies'.

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 2020 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 the 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.councilofadvicesxm.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.

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.

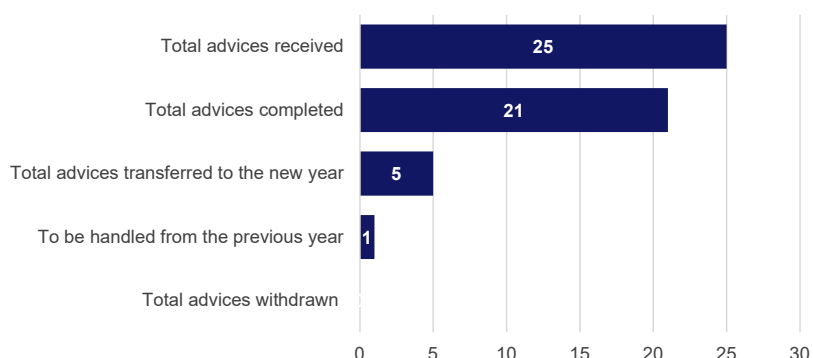
¹ A meeting with the Minister of Education, Culture, Youth & Sport Affairs did not take place.

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 2021:

Advice requests and rendered advices 2021



GOVERNMENT	
CoA ref. nr.	Subject
SM/01-21 NO	National Ordinance amending the National Ordinance Budget 2020
SM/02-21 NO	National ordinance to amend the National ordinance public health incorporating the regulation 2019-nCov
SM/03-21 NO	National Ordinance stipulating the budget for country Sint Maarten for the service year 2021 (National Ordinance Budget 2021)
SM/04-21 NO	Draft National Ordinance amending the National Ordinance Police and the National Ordinance for the Establishment and Organization of the National Government in connection with the reorganization of the Ministry of Justice
SM/05-21 NO	Draft National Ordinance on the Supervision of Stockbrokers and Asset Managers
SM/06-21 NO	Draft National Ordinance amending the National Ordinance identification cards in connection with the introduction of the identity card for the privileged in connection with the addition of identity cards for intergovernmental organizations
SM/07-21 NO	Draft National Ordinance amending the Income Tax Ordinance, Wage Tax Ordinance, Profit Tax Ordinance, Room Tax Ordinance, Car Rental Tax Ordinance, Motor Vehicle Tax Ordinance and Transfer Tax Ordinance in connection with establishing a World Bank office in Sint Maarten
SM/08-21 NO	National Ordinance stipulating the budget for country Sint Maarten for the service year 2022 (National Ordinance Budget 2022)

SM/09-21 NO	National Ordinance establishing the annual accounts for Sint Maarten for the financial year 2017
SM/10-21 NO	Draft National Ordinance Higher Education
SM/11-21 NO	National ordinance establishing the annual accounts for Sint Maarten for the financial year 2018
SM/12-21 NO	Draft National Ordinance amending the National Ordinance accident insurance and National Ordinance health insurance with the adjustment of the wage limits

GOVERNMENT

CoA ref. nr.	Subject
SM/04-20 ND	Draft 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/01-21 ND	Draft National decree, containing general measures, amending the Justice organizational decree in connection with the replacement of the Justice function book and some other changes included in the appendix
SM/02-21 ND	Draft National Decree Organizational decree Cabinets of Ministers
SM/03-21 ND	Draft National Decree, containing general measures, amending mint mark and mint master mark
SM/04/21 ND	Draft National decree, containing general measures, amending the National Ordinance identification cards in connection with the introduction of identity card for the privileged in connection with the addition of identity cards for intergovernmental organizations
SM/05/21 ND	Draft National decree, containing general measures, amending the supervision of compulsory education
SM/06/21 ND	Draft National decree, containing general measures amending the National Decree UNESCO committee St. Maarten in connection with increasing the fee for meeting attendance
SM/07/21 ND	Draft National Decree, containing general measures, amending the registration procedure, namely National Decree packaged medicines and National Decree social insurances.
SM/08/21 ND	Draft National decree, containing general measures amending the salaryscales of the Coast Guard of Sint Maarten
SM/09/21 ND	Draft National decree, containing general measures to supplement the appendix belonging to the National Decree on designating positions of confidentiality and the execution of security screenings at the Central Bank of Curacao and Sint Maarten

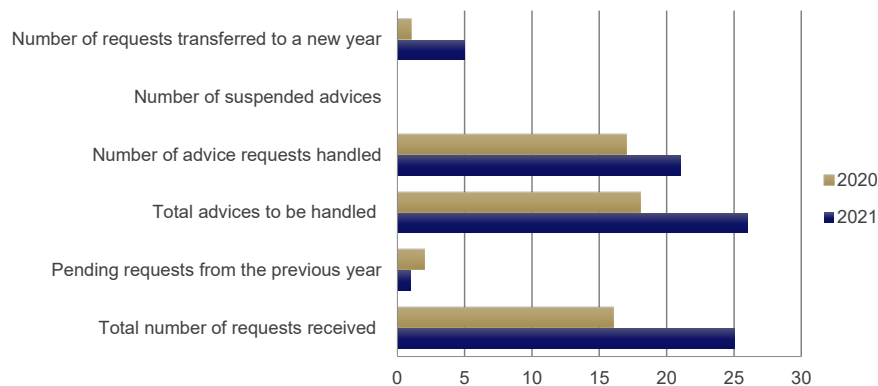
KINGDOM LAW

CoA ref. nr.	Subject
SM/01-21 RW	Kingdom law on the Caribbean Body for Reform and Development
SM/02-21-RW	Kingdom law containing general measures on the establishment of the Caribbean body for Reform and Development

ILV	
CoA ref. nr.	Subject
SM/01-21 ILV	Draft Initiative National Ordinance amending the permit National Ordinance concerning the trade in drinks and food and the provision of housing with service for a fee in connection with adjusting of opening hours and checking noise pollution (National Ordinance adjusting opening hours and policing on noise pollution)
SM/04-21 ILV	Draft Initiative National Ordinance introducing a National Health levy on tourists (National Ordinance tourist levy)

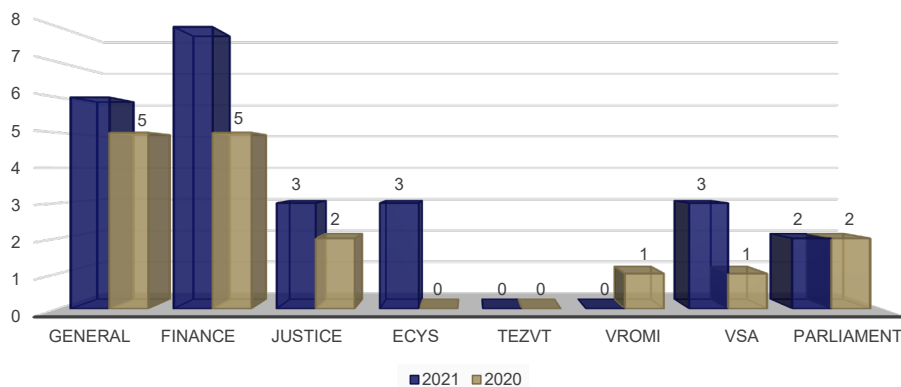
At the end of the year 2021 there were 5 advice requests pending that were transferred to the new year.

Incoming/outgoing advice requests



The below chart reflects an overview of advice requests received in 2021 divided per ministry (including draft initiative laws of Parliament):

Advices per ministry



Below is an overview of the advices issued in 2021:

#	Subject	Dictum
GOVERNMENT		
1	National Ordinance amending the National Ordinance Budget 2020 Reference: SM-01-21 NO // Advice: 16-feb-21	To send the draft ordinance to Parliament after the observations of the Council have been considered.
2	National Ordinance to amend the National Ordinance public health incorporating the regulation 2019-nCov Reference: SM-02-21 NO // Advice: 26-jan-21	To send the draft ordinance to Parliament.
3	National Ordinance stipulating the budget for country Sint Maarten for the service year 2021 (National Ordinance Budget 2021) Reference: SM-03-21 NO // Advice: 4-may-21	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
4	Draft National Ordinance amending the National Ordinance Police and the National Ordinance for the Establishment and Organization of the National Government in connection with the reorganization of the Ministry of Justice. Reference: SM-04-21 NO // Advice: 22-jun-21	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.
5	Draft National Ordinance on the Supervision of Stockbrokers and Asset Managers Reference: SM-05-21 NO // Advice: oct 19 21	To send the draft ordinance to Parliament after the observations of the Council have been considered.
6	Draft National Ordinance amending the National Ordinance identification cards in connection with the introduction of the identity card for the privileged in connection with the addition of identity cards for intergovernmental organizations. Reference: SM-06-21 NO // Advice: 3-aug-21	To send the draft ordinance to Parliament after the observations of the Council have been considered.
7	Draft National Ordinance amending the Income Tax Ordinance, Wage Tax Ordinance, Profit Tax Ordinance, Room Tax Ordinance, Car Rental Tax Ordinance, Motor Vehicle Tax Ordinance and Transfer Tax Ordinance in connection with establishing a World Bank office in Sint Maarten Reference: SM-07-21 NO // Advice: 24-aug-21	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
8	National Ordinance stipulating the budget for country Sint Maarten for the service year 2022 (National Ordinance Budget 2022) Reference: SM-08-21 NO // Advice: 9-nov-21	To send the draft ordinance to Parliament after the observations of the Council have been considered.

9	National Ordinance establishing the annual accounts for Sint Maarten for the financial year 2017 Reference: SM-09-21 NO // Advice: 21-sep-21	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.
10	Draft National Ordinance Higher Education Reference: SM-10-21 NO // Advice: 23-nov-21	To send the draft ordinance to Parliament after the observations of the Council have been considered.
11	National Ordinance establishing the annual accounts for Sint Maarten for the financial year 2018 Reference: SM-11-21 NO // Advice: 21-sep-21	To send the draft ordinance to Parliament after attention has been paid to the observations of the Council.
12	Draft National Ordinance amending the National Ordinance accident insurance and National Ordinance health insurance with the adjustment of the wage limits. Reference: SM-12-21 NO // Advice: 7-dec-21	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered.
13	Draft 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. Reference: SM-04-20 ND // Advice: 26-jan-21	To adopt the draft decree, containing general measures after the observations of the Council have been considered
14	Draft National decree, containing general measures, amending the Justice organizational decree in connection with the replacement of the Justice function book and some other changes included in the appendix. Reference: SM-01-21 ND // Advice: 24-aug-21	Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered.
15	Draft National Decree Organizational Decree Cabinets of Ministers. Reference: SM-02-21 ND // Advice: 7-sep-21	In conclusion the Council suggests government not to adopt the draft decree containing general measures in this manner
16	Draft National decree, containing general measures, amending the National Ordinance identification cards in connection with the introduction of identity card for the privileged in connection with the addition of identity cards for intergovernmental organizations. Reference: SM-04-21 ND // Advice: 3-aug-21	To adopt the draft decree, containing general measures after the observations of the Council have been considered.
17	Draft National decree, containing general measures, amending the registration procedure, namely national decree packaged medicines and national decree social insurances. Reference: SM-07-21 ND // Advice: 30-nov-21	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council

18	Draft National decree, containing general measures, amending the registration procedure, namely national decree packaged medicines and national decree social insurances. Reference: SM-07-21 ND // Advice: 30-nov-21	To adopt the draft decree, containing general measures after the observations of the Council have been considered.
19	Kingdom law containing rules on the establishment of the Caribbean Body for Reform and Development (COHO) Reference: SM-01-21 RW // Advice: 16-mrt-21	
20	Kingdom law containing rules on the establishment of the Caribbean body for Reform and Development (COHO) Reference: SM-02-21 RW // Advice: 31-aug-21	
21	Initiative National ordinance amending the permit National Ordinance concerning the trade in drinks and food and the provision of housing with service for a fee in connection with adjusting opening hours and checking noise pollution (National Ordinance adjusting opening hours and checking noise pollution) Reference: SM-01-21 ILV // Advice: 8-jun-21	

Table 1 - Overview advices issued over the year 2021.

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 2021 the two most mentioned advisory comments were on the following aspects:



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.

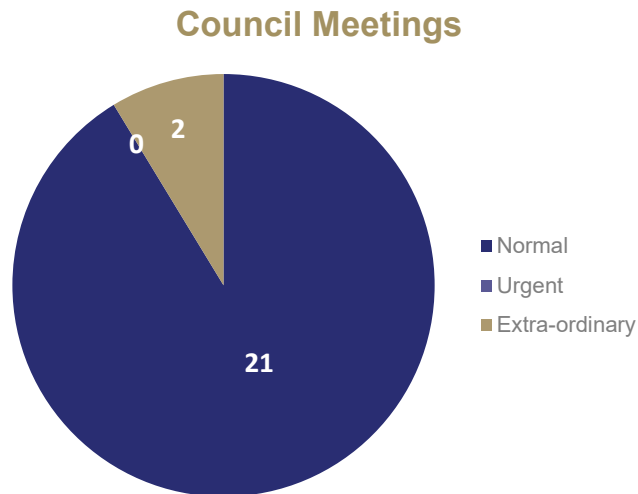
Entry into force provision

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 Instructions for the Regulations of Sint Maarten.

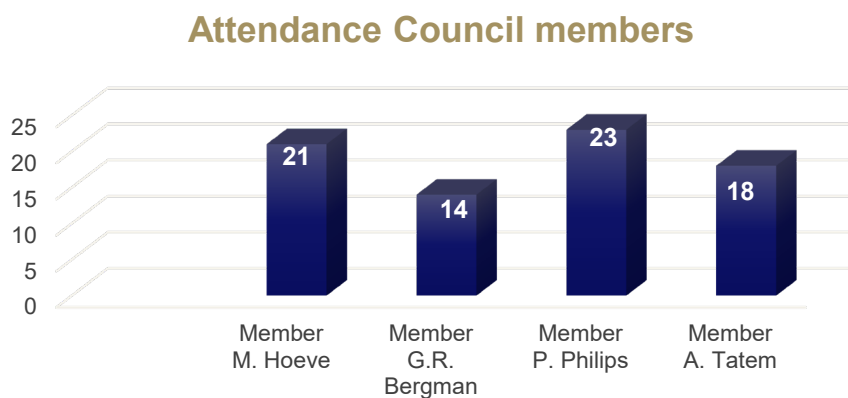


3.3 Meetings

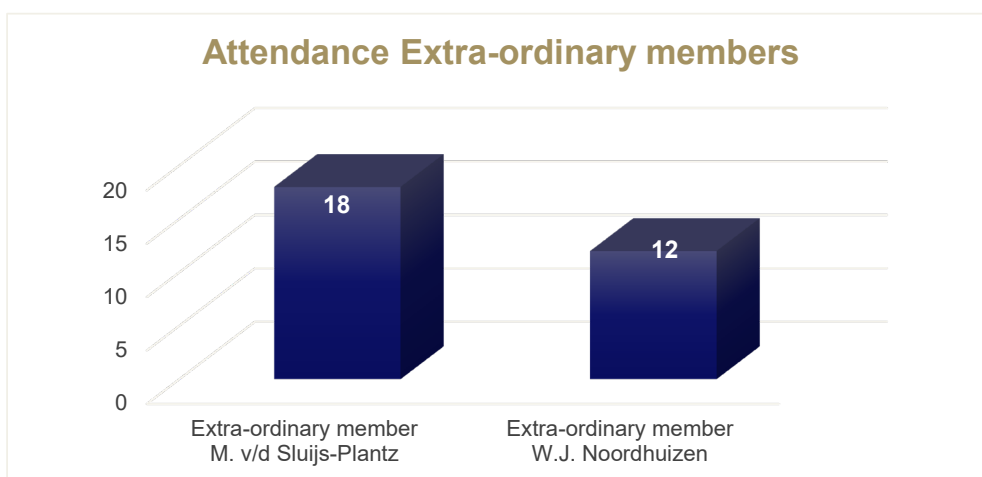
A total of 23 meetings were held during the year 2021, of which 21 were regular meetings, 0 were urgent meetings and 2 were extraordinary meetings chaired by His Excellency the Governor.



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

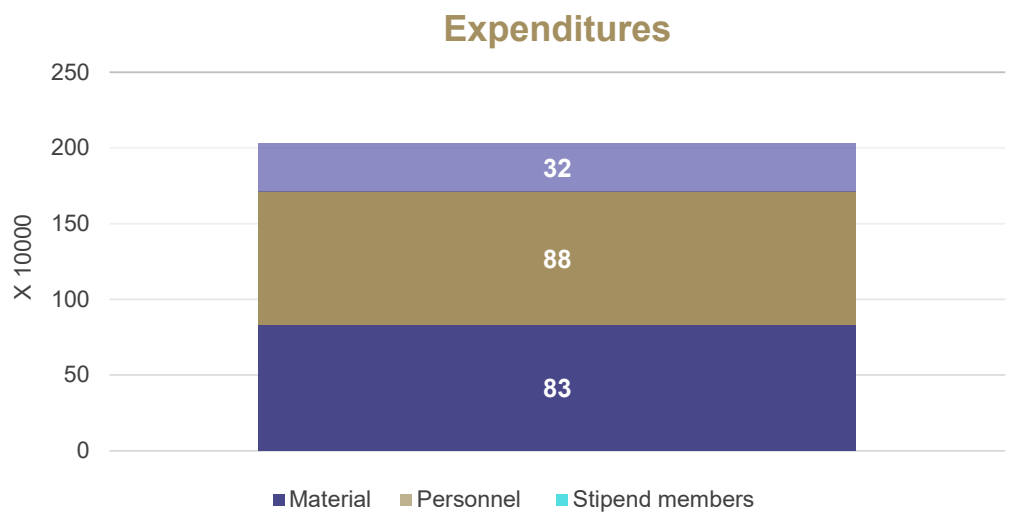


Below is an overview of the attendance of the extraordinary members of the Council:



3.4 Expenditures

The total cost of advising by the Council was budgeted in 2021 at N Af. 2,031,256.00.



4. THEME: THE REGULATORY RESPONSE TO THE CORONAVIRUS CRISIS (PART II)



1. Introduction

Each year, the Council of Advice elaborates a thematic piece in its year report on a subject that formed the common thread of the draft-laws submitted to it in that year. Calendar year 2021, like 2020, was an unusual year. The corona crisis has continuously had an impact on this. The legal measures that were introduced in response to the crisis often fell outside the Council's regular review authority. Although certain requests for advice were (in)directly related to the corona crisis, there was no legal obligation to consult the Council for the majority of measures taken by the government (at ministerial and policy level)². In this second

edition, which builds on the theme from the Council's 2020 year report, the Council will take a look at some of these so-called crisis regulations.

In the following chapter, all regulations regarding the declaration of the state of emergency will be discussed. In chronological order these are: the National Decree of April 4, 2020 to declare the state of emergency³; the National Decree of April 18, 2020⁴ extending the state of emergency⁵; the Ministerial Regulation of April 19, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020; the ministerial regulation of April 25, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020⁶; the Ministerial Regulation of May 3, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020⁷; the National Decree of May 10, 2020 to extend the state of emergency⁸ and finally the National Decree of June 12, 2020 to lift the state of emergency⁹.

Finally, we will look back at the government's regulatory response to the coronavirus crisis and examine whether the current set of instruments has had a sufficiently controlling effect. Also looking at the future departure points will be provided to further enhance the government's response to an emergency from a regulatory perspective.

² Article 69 of the Constitution of Sint Maarten in conjunction with Article 13 of the National Ordinance Council of Advice.

³ AB 2020, no. 19.

⁴ AB 2020, no. 21.

⁵ AB 2020, no. 22.

⁶ AB 2020, no. 23.

⁷ AB 2020, no. 24.

⁸ AB 2020, no. 27.

⁹ AB 2020, no. 33.

2. Regulations related to the state of emergency

§ 2.1. National decree of April 4, 2020 to declare the state of emergency¹⁰

An important reason for declaring a state of emergency on Sint Maarten was the determination by the World Health Organization that there was a pandemic with regard to the spread of the new influenza virus COVID 19/SARS-cOv-2. The health risks for the population of Sint Maarten have therefore been (rightly) taken into account in the considerations in that decision. After all, the public safety, life, health and well-being of the people of Sint Maarten were threatened to such an extent that the government had to take action. In doing so, it had to take (drastic) measures to combat and limit the negative consequences of the pandemic.

§ 2.2. National decree of April 18, 2020 to extend the state of emergency¹¹

Initially, the state of emergency was declared for a period of two weeks, from April 5, 2020 to April 19, 2020. It was gradually established that the measures taken by the government to combat and limit the coronavirus and to protect the health of the Sint Maarten's inhabitants in that relatively short period did not lead to a reduction in the infection rate. With this substantiation, it was decided to extend the state of exception by three weeks by means of an extension decision.

This extension decision underlines the importance of an ongoing assessment of the situation by the government. Depending on developments in practice, a decision could be taken on whether or not to maintain the state of emergency. In that evaluation, a qualitative provision of information proved to be of great importance. For example, there was initially a lack of sufficient testing capacity to determine the number of infections with a reasonable degree of accuracy. In addition, the degree of compliance by the population with the measures also played a role in the evaluation of, whether or not to extend the state of emergency, whether under the same conditions or not.

One of the most telling liberties curtailed by the state of emergency was freedom of movement. The reason for this containment was that it was seen as one of the most effective ways to contain further spread of the virus. In addition, it was seen as a necessary decision in order to spare the health care system, with its limited capacity. It can be stated that the consideration and the eventual decision to extend the state of emergency was based on a proper weighing of interests.

An example of a mistake in the extension decision can be found in Article 5, second paragraph, part c, in which an editorial error has occurred. After all, the provision is not complete and must read in accordance with Article 16, first paragraph, National Ordinance states of emergency. This could have caused problems in the application. In short, the provision lacked the addition that certain objects could be 'examined' or 'confiscated' by the designated investigating officers. This example underlines the importance of adequate legal-technical control in such decisions.

¹⁰ AB 2020, no. 19.

¹¹ AB 2020, no. 21.

§ 2.3. Ministerial regulation of April 19, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020¹²

A number of changes were made to the appendix to the National Decree on the state of emergency by ministerial regulation of April 19, 2020. In concrete terms, additional provisions have been made in order to allow pharmacies to be open to the public without restriction and that medical service providers and laboratories should also be counted among the essential services. This has been announced through the media and the regulation has come into effect as a matter of urgency. This change demonstrates the need to continuously adjust the measures, in line with developments and experience in practice.

§ 2.4. Ministerial regulation of April 25, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020¹³

It appeared in this amendment that no account had been taken of the fact that public holidays were also included within the period for which a state of emergency was declared, which, in the absence of further amendments, could create uncertainty about the application of the restrictions on the public to go on public roads. In concrete terms, it concerned April 27, 2020 (King's Day) and May 1, 2020 (Labour Day). In contrast to the previous one, this amendment replaced the entire appendix. The solution was to make an exception for that one week in which the conditional opening of certain services was allowed in the intervening days, and people were allowed to go on public roads. Once again, this example shows that the need for rapid decision-making is sometimes accompanied by (minor) omissions in the drafting of emergency regulations.

§ 2.5. Ministerial regulation of May 3, 2020 amending the appendix to the National Decree on the state of emergency of April 18, 2020¹⁴

In this regulation, the hours within which the public was allowed to go on public roads on the days and times specified in the national decree to buy food and other necessities from supermarkets or other shops that sell foodstuffs and to visit of banks, pharmacies and petrol stations were revised. On reflection, it was considered necessary to allow more time for the public to arrange the aforementioned matters.

It was also considered important to allow the public the necessary time to go out on public roads for physical exercise. To this end, in accordance with Article 2, fourth paragraph, of the National Decree on the state of emergency, the annex has been amended by ministerial order. This example also expresses the need for dynamic decision-making.

§ 2.6. National decree of May 10, 2020 to extend the state of emergency¹⁵

This decision concerned a second extension (by six weeks) of the state of emergency. The considerations on which this was based were not the considerations that could be considered in the first place in such a decision. A prolongation of the state of emergency is appropriate in a situation in which there is still insufficient evidence of an improvement in circumstances or a decrease in the threat to proceed with the lifting of the state of emergency. In

¹² AB 2020, no. 22.

¹³ AB 2020, no. 23.

¹⁴ AB 2020, no. 24.

¹⁵ AB 2020, no. 27.

this case, the outcome of an evaluation conducted over the already elapsed period of the state of emergency was that, to put it simply, things were moving in the right direction again. The government was satisfied with the extent to which the population adhered to the restrictive rules (sufficient degree of compliance) and noted that the infection rates had stabilized (effectiveness). As a result, it has been decided to proceed with a phased easing of the measures within the framework of the emergency situation. In other words, the government considered it necessary to extend the state of emergency in order to properly regulate and monitor the phased easing of the measures. For this purpose, it has also been determined that this would be a conditional easing, whereby an increase in the infection figures could be a reason to postpone or reverse the easing¹⁶.

§ 2.7. National decree of June 12, 2020 to lift the state of emergency¹⁷

The phased easing of the corona measures was considered a success in the decision to lift the state of emergency, especially in view of the decreased infection rates. That is why the government has decided with this decision to lift the state of exception after more than three months.

3. Conclusion

A proper and fair weighing of interests (proportionality, subsidiarity) is of great importance in any measure to combat a crisis situation in which the fundamental rights and freedoms of citizens are compromised.

In its weighing of interests, the government has argued, among other things, that restricting people's freedom of movement is one of the most effective methods of curbing further infections with the coronavirus, partly in view of the fact that infected persons can be asymptomatic but can infect others. This is a widely accepted view that has justified a temporary restriction of the freedom of movement of citizens. In view of the low and stable infection rate on Sint Maarten, it can be concluded with caution that the measures taken have led to sufficient control of the pandemic locally.

The principle of due care and legal certainty are also of great importance when, in the context of a state of emergency, the fundamental rights of citizens are whether or not temporarily restricted. Admitted that speed of decision-making is often called for in crisis situations, the regulations on which measures restricting constitutional rights are based must be carefully formulated and put together. In that context, it is not unwise to subject temporary emergency regulations to the necessary legal checks as well. Because the time is not right during a crisis, it is recommended to develop standard models in the future that are not subject to such time pressure. Compare preparing a disaster plan before disaster strikes.

Furthermore, an essential element for careful decision-making is the presence of the right knowledge; information and data about the relevant facts and circumstances of the situation. The ultimate weighing of interests partly depends on the quality and quantity of this. Gathering relevant and up-to-date information is therefore indispensable for careful decision-making.

¹⁶ Article 1 of attachment 3 belonging to the the National Decree of May 10, 2020, number 2020/0324.

¹⁷ AB 2020, no. 33.

5. ANNEXES

5.1 Annex 1 – Secondary activities of the members in 2021

Member	Secondary activities
Ms. Melinda Hoeve, LL.M. (member)	<ul style="list-style-type: none"> Managing Partner/Attorney-at-Law Hoeve & Rogers Acting Vice-chair Council of Advice as per April 17, 2021 Board member of the St. Maarten Lions Club Member of the Disciplinary Board of Attorneys Board member of the Mental Health Foundation
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; Acting Vice-chair Council of Advice from December 15, 2020 until April 16, 2021 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)
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

5.1 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.