



To His Excellency the Governor of Sint Maarten
drs. E.B. Holiday
Falcon Drive # 3
Harbour View
Sint Maarten

RvA No. SM/16-14-LB

Subject: Draft National Decree containing general measures establishing the Council of Education and Labor Market (National Decree establishing the Council of Education and Labor Market) (your reference number LH-14/0020).

Advice: With reference to your request dated September 12, 2014 for the advice of the Council of Advice on the abovementioned subject and the discussion thereof at the meeting of the Council on January 20, 2015, and the adoption thereof at the meeting of the Council on January 20, 2015, the Council informs you as follows.

According to the considerations, the purpose of the draft National Decree containing general measures is to establish the Council of Education and Labor Market (hereinafter: "ROA", as abbreviated in Dutch), having regard to Article 70, second paragraph, of the Secondary Vocational Education National Ordinance (hereinafter: the National Ordinance).

1. Policy analytical assessment

1.1 Composition ROA

Article 5, first paragraph, of the draft states that the ROA will be set up as a tripartite committee consisting of eleven members at most, who will be appointed by ministerial order. Article 5, second paragraph, of the draft states that the membership will be divided as follows:

- three by employers' organizations;
- three by employees' organizations;
- three by the Government.

It is not clear to the Council why a sizable committee like this was opted for, especially since a deputy can be appointed for each member. It also is not clear when and how the deputies will enter the scene. The Council asks that attention be paid to this.



1.2 Duties of the ROA

The Council finds the duties of the ROA in the Secondary Vocational Education National Ordinance. Article 2, first paragraph, of the draft lists these duties.

The Council considers it striking that the duty mentioned in subparagraph e does not arise from the National Ordinance. Subparagraph e provides that the ROA will be responsible for stimulating labor organizations to contribute to the internship element of training programs. This concerns a new duty based on Article 70, second paragraph, of the National Ordinance. The Council is of the opinion that it is advisable to clarify in the Explanatory Memorandum why the Government has added this new duty.

The Council asks that attention be paid to this.

In addition, the Council noticed that the general part of the Explanatory Memorandum, third paragraph, states that the ROA will engage in *inter alia* the “improvement of preparatory secondary vocational education (abbreviated in Dutch as “VSBO”), as required by Article 70, second paragraph, of the National Ordinance”.

The Council advises to omit this sentence, now that the VSBO is not mentioned in the National Ordinance.

A similar situation occurs in the fifth paragraph of the general part of the Explanatory Memorandum. It states that applications for recognition of vocational training programs should be submitted to the Minister through the intermediary of the ROA.

The Council advises to omit the sentence beginning with “Applications for recognition”, now that this is not in accordance with Article 3, third paragraph, of the National Ordinance. This Article states that the application is submitted directly to the Minister, and not through the intermediary of the ROA.

The Council asks that attention be paid to this.

1.3 Conditions for appointment as a member

The Council notes that the only condition for being appointed a member of the ROA is that the person is a resident of Sint Maarten. According to the explanatory notes to Article 2, it is important that the duties are performed by an independent body that has the expertise and authority to analyze, evaluate and advise on policy aspects.

The Council is of the opinion that an understanding of society and knowledge of the culture are inseparable from the experience



mentioned above. The Council therefore advises to include as an additional condition that, prior to the nomination of a member, the candidate should have been a resident of Sint Maarten for at least three consecutive years.

The Council asks that attention be paid to this.

1.4 The chairman

The Council reads in Article 6, first paragraph, of the draft that the members elect a chairman and a deputy chairman from among themselves. The second paragraph shows that the organization from which a chairman and a deputy chairman are elected submits a binding written nomination for a new member.

The Council finds it obvious that, when being appointed, the chairman and the deputy chairman lose the right to vote under Article 11, sixth paragraph, of the draft. This surprises the Council, now that the chairman and deputy chairman have been appointed as a member first of all and therefore have the right to vote. It is not clear to the Council what the reason is for this.

The Council advises to clarify the above in the Explanatory Memorandum.

Furthermore, the Council reads in Article 5, fifth paragraph, of the draft that the members are appointed for a maximum period of three years (with the exception of Article 12), and that they can be immediately reappointed. Article 6, fourth paragraph, of the draft states that, if the term of office of the chairman and deputy chairman expires, the members will elect a new chairman from among themselves.

It is not clear to the Council why it is not possible to keep open the option to reappoint the chairman or his deputy as such, should this be desirable.

The Council asks that attention be paid to this.

1.5 Remuneration of the members

The Council observes that the draft makes no mention of any remuneration of the members. If this was a conscious decision, the Council advises to include this in the Explanatory Memorandum in the interests of clarity of the draft.

2. Legal assessment

2.1 Ministerial order

The Council notes that, in *inter alia* Article 5, first paragraph, Article 8 and Article 9, as well as in the Explanatory Memorandum, in the article by article part, under the heading



named: “Articles 5 and 6”, in the penultimate paragraph, the term ministerial order is used.

The Council advises not to use this term, because a ministerial order is not a statutory provision within the meaning of Article 81 of the Constitution. The Council advises to use the form of a national decree for the appointment, suspension and dismissal of the members in the interests of legal certainty and in particular in the interests of clarity of the draft.



2.2 Lack of a financial section

Article 10, first paragraph, of the National Accountability Ordinance provides that, in the explanatory memorandum to the draft of a national ordinance, a national decree containing general measures or a ministerial regulation in which new policy intentions or commitments concerning the policy to be pursued are elaborated, a separate section should be included, stating the financial consequences for and the coverage by the country.

The Council noted that such a section explaining the financial consequences of the draft is lacking in the Explanatory Memorandum. The Council is of the opinion that this draft has financial consequences, now that, under Article 13 of the draft, the minister will provide all facilities for the proper performance of the duties. In addition, as previously noted in the advice, it is not clear whether the members will receive a remuneration or not. The Council advises to include this in a financial section.

The Council asks that attention be paid to this.

3. Legal-technical assessment

The annex contains comments of an editorial and legal-technical nature. These comments are deemed to form an integral part of this advice.

4. Conclusion

In conclusion, the Council asks the Government to adopt the draft National Decree, containing general measures, after attention has been given to the observations of the Council.

Thus adopted at the meeting of the Council of January 20, 2015.

The Secretary
[was signed:]

Mr. *mr.* A.G. Baly

The Vice-Chair
[was signed:]

Ms. *mr. drs.* M.C.C. Brooks-Salmon



ANNEX to the advice of January 20, 2015, RvA No. SM/16-14-LB

Comments of an editorial and legal-technical nature

The draft contains a number of editorial and legal-technical imperfections. The Council gives the following non-exhaustive examples.

The draft

- a. It is proposed to reformulate the second hyphen in the considerations as follows: “- that the need for establishing a Council for Education and the Labor Market (ROA) has become urgent”. The Council takes note that the institute for secondary vocational education is mentioned by name both in the considerations and in the general part of the Explanatory Memorandum. The Council considers this unusual and advises to omit names such as this.
- b. It is proposed to reformulate Article 1, subparagraph b, as follows: b. Minister: the minister responsible for education.

The Explanatory Memorandum

- a. It is proposed to omit the sentence beginning with the words “From 2009 through 2013” in the general part, in the first paragraph, until the end of the paragraph. For the reason hereof, the Council refers to subparagraph a, under the heading “The draft”, of this annex.