



Council of Advice
Raad van Advies



ANNUAL REPORT

Strengthening our Democracy

2017

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,

No one could have predicted that the most devastating hurricane in the Atlantic region would ever visit Sint Maarten. Due to the damage caused to our office following the passing of hurricane Irma, the Council of Advice (hereinafter: the Council) had to find temporary accommodation in order to be able to carry out its duties. This was achieved within a little over a month, thanks to the diligent efforts of the secretariat.

As a result of the hurricane and its aftermath, the Council has had to adapt to the new circumstances. Activities such as the planned workshop on Financial Statements of the Government and our participation in the International Law

Conference in Belgium, where the Council would be giving a presentation on the theme "Bilingualism on Sint Maarten: Fiction between norm and reality", had to be canceled.

Following these trying times the Council received comfort and moral support from its colleagues in Curaçao, Aruba and the Netherlands. Given the ongoing, it was also decided upon not to host the Caribbean Tri-Partite on Sint Maarten in 2018. The Council is very grateful to its colleagues for their understanding and cooperation.

Despite these challenges, the Council received a total of 27 advice requests and rendered a total of 24 advices. As is customary, the annual report provides an overview of the composition, activities, advice requests and the advices rendered to the Government and Parliament. In line with this and interestingly enough, the Council rendered 3 separate advices on the Integrity Chamber. More information regarding this topic can be read in chapter 3 of this report.

The Council has had 3 interns as additions to the office, 2 of which were from secondary school in the Administration Department and one from college in the Legal Department. In addition, the Council also reports that it has launched a completely revamped website that has been optimized for use on tablets and smartphones.

In keeping with the Council's objectives to continuously strengthen and deepen the knowledge of Council members and staff alike, various courses were organized and attended by the Council. An overview of these courses can be found in chapter 2. The Council also organized a lecture given by Professor Dr. F. Goudappel, entitled "St. Maarten and the European Union after 2020".

Unfortunately, the Council had to say farewell to Mr Gaston Bell, who reached the retirement age for the Council. Mr. Bell served as a member of the Council from its inception. Legal Advisor, Ms. Jessica Weeks also said farewell in December 2017.

In closing, I would like to thank all the members and the secretariat of the Council for their valuable contribution to the success of the Council, despite the very difficult last four months of 2017.

Sincerely

Mrs. Mavis Brooks-Salmon LL.M., MA

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*

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 legal framework?

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.

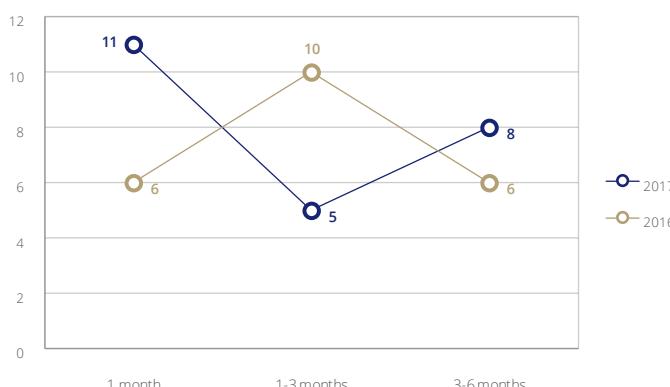
1.2 Advisory time

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 and capacity 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 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 2017 would be the following:

Advisory time of an advice



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.

During the handling of a specific advice request during the year, it appeared that the respective advice request contained several legal inadequacies. These inadequacies were of such nature that the Council had to come to the conclusion that none of the usual dicta were appropriate for this advice.

Given the aforementioned, the Council felt compelled to expand its current dicta with a new dictum that reads as follows:

1. Draft national ordinance

"Not to send the draft national ordinance to parliament in this manner".

2. Draft national decree, containing general measures

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

An overview of the established dicta used by the Council of Advice is included in annex 2.

2. OPERATIONAL MANAGEMENT OF THE COUNCIL OF ADVICE

2.1 Composition of the Council of Advice in 2017

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 the meeting of the Council as often as he deems it necessary; on those occasions he has an advisory voice.

Article 1 of the Council of Advice ordinance states that the Council consists of five members, including a vice-chair and, at most, five extraordinary members.

The composition of the Council of Advice as per January 1, 2017 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:
Mr. Jan Beaujon
Mr. Gaston Bell LL.M.
Mr. Louis Duzanson
Ms. Marcella Hazel MA

Extraordinary members:
Mr. Rik Bergman LL.M.
Mr. Miguel Alexander LL.M.
Ms. Patricia Philips

The composition of the Council of Advice as per December 31, 2017 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:

Mr. Jan Beaujon
Ms. Marcella Hazel MA
Mr. Rik Bergman LL.M.

Extraordinary members:

Mr. Miguel Alexander LL.M.
Ms. Patricia Philips
Mr. Louis Duzanson

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

2.2 Composition of the secretariat in 2017

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, 2017 was as follows:

Secretary Director:

Mr. Ajamu Baly LL.M.

Legal advisor(s):

Mr. Mischa Keppel LL.M.

Ms. Nathalie Tackling LL.M.

Ms. Jessica Weeks LL.M.

Office Manager

Mrs. Tswana Nunes-Burleson

All-round administrative Assistant:

Ms. Whitney Murray

The composition of the secretariat of the Council of Advice as per December 31, 2017 was as follows:

Secretary Director:

Mr. Ajamu Baly LL.M.

Legal advisor(s):

Mr. Mischa Keppel LL.M.

Ms. Nathalie Tackling LL.M.

Office Manager

Mrs. Tswana Nunes-Burleson

All-round administrative Assistant:

Ms. Whitney Murray

The program was open to eligible professionals of the public and private sector as well:

- Prof. mr. Arjen van Rijn gave a course on Constitutional law;
- Prof. Dr. Sjoerd Zijlstra gave a course on Administrative law;
- Dr. Nico Florijn gave a course on how to judge legislative technicalities in different aspects of the laws;
- Prof. mr. Luc Verhey supplied the training on the policy analysis of draft legislation; and
- Prof. Dr. Jan Renkema taught the participants how to judge legal text.

- The Vice-chair and the Acting Secretary Director attended the annual meeting of the Dutch association for legislation in the Netherlands in June;
- The Council and Secretariat members attended the Governors' Symposium entitled "ICT Governance – Shaping our Future" in June;
- A legal advisor followed an internship by the Council of State in the Netherlands in July;
- A member of the Council and a legal advisor attended the 2nd Dutch Caribbean Gaming Regulation Forum on Curacao in August;
- A member of the Council attended the Master Class Effective Financial Supervision on Aruba in October;

2.3 Knowledge policy and training

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

- In collaboration with the Academy for Legislature in the Hague a program was put together for the Council that took place from March to June 2017.

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 in agreement with the Council and the relevant Minister. The Council submitted its draft budget for the year 2018 to the Minister of Finance and Parliament in accordance with the National Government Accounting Ordinance.

2.5 Communication

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

During the year the Council also launched its revamped website. The new webpage is more user-friendly, concise and is made easier to retrieve information. Users are able to track and follow the receipt and progress of new advice requests and now have access to advices that have been made public. The new website is also available in English.

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.

2.5.1 National ordinance open Government (Landsverordening openbaarheid van bestuur)

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

2.5.2 Lectures

The Council held a lecture in February entitled "Sint Maarten and the European Union after 2020". This topic is extremely relevant because Sint Maarten is one of the so-called Overseas Countries and Territories(OCT)oftheEuropeanUnion.This meansthat a limited part of European law is valid in Sint Maarten, while there is access to subsidies like the European Development Fund (EDF). However, this financial basis will disappear or at least change drastically in 2020 with the end of the present EDF. Moreover, Brexit will mean that all British OCT's will leave the system. The keynote speaker for this lecture was Professor Dr. Flora Goudappel.

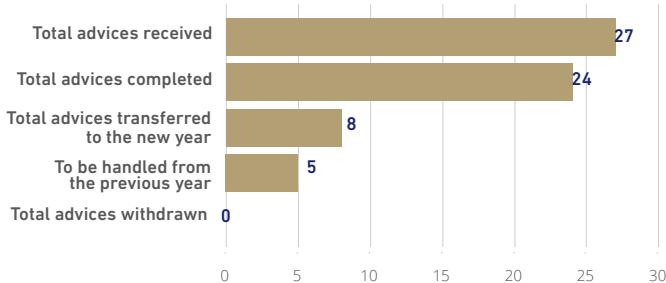
¹ A meeting with the Minister of Tourism, Economic Affairs, Traffic and Telecommunication did not take place.

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 2017:

Advice requests and rendered advices 2017



Government	
CoA ref. nr.	Subject
SM/01-17 NO	Draft National Ordinance amending Book 2 of the Civil Code
SM/02-17 NO	Draft National Ordinance amending the National Ordinance structure and organization of national government in connection with the embedding of the Cabinet of the Minister of Plenipotentiary
SM/03-17 NO	Draft National Ordinance amending the General national ordinance national taxes in connection with International obligations (URGENT)
SM/04-17 NO	Draft National Ordinance amending the National Ordinance on the 2017 Budget in connection with changes to the regular expenditures and the capital expenditures (URGENT)
SM/05-17 NO	Draft National Ordinance establishing the new Criminal Procedure Code (URGENT)
SM/06-17 NO	Draft National Ordinance containing the rules that pertain to the establishing of, acquiring or disposing of shares in, the Development Bank of Sint Maarten and amending various national ordinances in order to structurally increase Government revenue (URGENT)
SM/07-17 NO	Draft National Ordinance containing the repealment of certain national ordinances in the area of taxes that have become obsolete
SM/08-17 NO	Draft National Ordinance to establish the Budget for Country Sint Maarten for the service year 2018 (URGENT)
SM/09/17 NO	Draft National Ordinance amending the national ordinance Council of Advice in connection with increasing the age limit of Council Members (URGENT)

SM/10-17 NO	Draft National Ordinance amending the Criminal Code in connection with the implementation of some urgent International obligations
SM/11-17 NO	Draft National Ordinance to accept the proposal of the Kingdom law of the member van Laar, amending articles 14 and 38 of the Kingdom Charter of the Netherlands (restricting the possibility to issue a General Kingdom Measure without a legal basis)
SM/12/17 NO	Draft National Ordinance amending the National Ordinance to notify cross-border cash transports in response to recommendations 32 and 33 of the Financial Action Task Force
SM/13-17 NO	Draft National Ordinance regulating a compulsory uniform insurance against medical expenses (URGENT)
SM/14-17 NO	Draft National Ordinance amending the Constitution in connection with establishing the Integrity Chamber, as well as regulating the structure, composition, tasks and authority of the Integrity Chamber (URGENT)
SM/15-17 NO	Draft National Ordinance amending the 2017 Budget in connection with changes to the regular expenditures and capital service (URGENT)
SM/16-17 NO	Draft National Ordinance establishing the Integrity Chamber, as well as regulating the structure, composition, tasks and authority of the Integrity Chamber (URGENT)
SM/17-17 NO	Draft National Ordinance amending the national accounting ordinance in connection with promotion of the enforceability of public procurement rules
SM/18-17 NO	Draft National Ordinance establishing the annual financial statements of Sint Maarten for the year 2013
SM/19-17 NO	Draft National Ordinance establishing the annual financial statements of Sint Maarten for the year 2014
SM/20-17 NO	Draft National Ordinance amending the National Ordinance on the 2017 Budget in connection with changes to the regular expenditures (URGENT)
SM/08-16 NO	Draft National Ordinance amending the National Ordinance on profit tax
SM/09-16 NO	Draft National Ordinance regulating the waiving of the tax debt over the tax years 2006 and prior
SM/11-16 NO	Draft National Ordinance revising formal tax law
SM/13-16 NO	Draft National Ordinance amending the National Ordinance on motor Liability insurance containing rules pertaining to penalizing not extending proof of insurance to an investigating officer upon request

Government	
CoA ref. nr.	Subject
SM/01-17 ND	Draft National Decree, containing general measures, establishing the rules for (sur)name change
SM/02-17 ND	Draft National Decree, containing general measures, amending the national decree, national exams VWO, HAVO, VSBO
SM/03-17 ND	Draft National Decree, containing general measures, amending the national decree, determining the financial provisions of the members, the substitute members and of the Secretary Director of the Social-Economic Council
SM/04-17 ND	Draft National Decree, containing general measures, amending the national decree on the supervision of aviation in connection with the setting of tariffs for services and activities
SM/05-17 ND	Draft National Decree, containing general measures, determining the financial provisions for the members and substitute members of the Electoral Council
SM/08-16 ND	Draft National Decree establishing the composition, tasks and work method of the placement committee for privatization of administrative services

DIV	
CoA ref. nr.	Subject
SM/01-17 DIV	Draft decision containing rules for establishing an Integrity Chamber (URGENT)
SM/02-17 DIV	Request for advice on the revision of the Rules of Order of Parliament

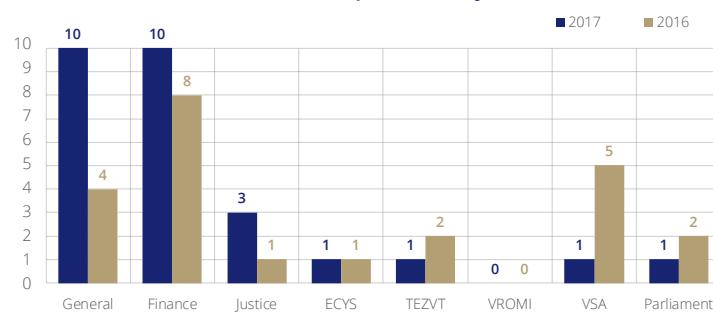
At the end of the year 2017 there were 5 advice requests that were pending. These advices were transferred to the new year.

Incoming / outgoing advice requests 2016-2017



The below chart reflects an overview of advice requests received in 2017 divided per ministry (including draft initiative laws of Parliament):

Advices per Ministry



Below is an overview of the advices issued in 2017:

#	Subject	Dictum
Government		
1	Draft National Ordinance amending the National Ordinance on profit tax Reference: SM/-08-16 NO Advice: 15-feb-17	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered
2	Draft National Ordinance regulating the waiving of the tax debt over the tax years 2006 and prior Reference: SM/09-16 NO Advice: 16-may-17	Not to send the draft ordinance to Parliament
3	Draft National Ordinance revising formal tax law Reference: SM/11-16 NO Advice: 10-jan-17	To send the draft ordinance to Parliament after the observations of the Council have been considered

#	Subject	Dictum	
Government			
6	Draft National Ordinance amending the National Ordinance structure and organization of National government in connection with the embedding of the Cabinet of the Minister of Plenipotentiary Reference: SM/02-17 NO Advice: 4-jul-17	To send the draft ordinance to Parliament after attention has been given to the observations of the Council;	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered
7	Draft National Ordinance amending the General national ordinance national taxes in connection with International obligations Reference: SM/03-17 NO Advice: 20-jun-17	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered	To send the draft ordinance to Parliament after the observations of the Council have been considered
8	Draft National Ordinance amending the National Ordinance on the 2017 Budget in connection with changes to the regular expenditures and the capital expenditures Reference: SM/04-17 NO Advice: 18-jul-17	To send the draft ordinance to Parliament after the observations of the Council have been considered	To send the draft ordinance to Parliament after the observations of the Council have been considered
9	Draft National Ordinance containing the rules that pertain to the establishing of, acquiring or disposing of shares in, the Development Bank of Sint Maarten and amending various national ordinances in order to structurally increase Government revenue Reference: SM/06-17 NO Advice: 1-aug-17	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered	To send the draft ordinance to Parliament after the observations of the Council have been considered
10	Draft National Ordinance containing the repealment of certain national ordinances in the area of taxes that have become obsolete Reference: SM/07-17 NO Advice: 29-aug-17	To send the draft ordinance to Parliament after attention has been given to the observations of the Council;	In conclusion the Council suggests government not to adopt the draft decree containing general measures in this manner
11	Draft National Ordinance to establish the Budget for Country Sint Maarten for the service year 2018 Reference: SM/08-17 NO Advice: 11-aug-17	Not to send the draft ordinance to Parliament, until the observations of the Council have been considered	Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered
12	Draft National Ordinance amending the National Ordinance Council of Advice in connection with increasing the age limit of Council members Reference: SM/09-17 NO Advice: 29-aug-17	To send the draft ordinance to Parliament after attention has been given to the observations of the Council;	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council
13	Draft National Ordinance amending the National Ordinance to notify cross-border cash transports in response to recommendations 32 and 33 of the Financial Action Task Force Reference: SM/12-17 NO Advice: 19-dec-17	To send the draft ordinance to Parliament after the observations of the Council have been considered	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council
14	Draft National Ordinance amending the Constitution in connection with establishing the Integrity Chamber, as well as regulating the structure, composition, tasks and authority of the Integrity Chamber Reference: SM/14-17 NO Advice: 23-oct-17		
15	Draft National Ordinance amending the 2017 Budget in connection with changes to the regular expenditures and capital service. Reference: SM/15-17 NO Advice: 21-nov-17		
16	Draft National Ordinance establishing the Integrity Chamber, as well as regulating the structure, composition, tasks and authority of the Integrity Chamber Reference: SM/16-17 NO Advice: 27-nov-17		
17	Draft National Ordinance amending the National Ordinance on the 2017 Budget in connection with changes to the regular expenditures Reference: SM/20-17 NO Advice: 14-dec-17		
18	Draft National Decree establishing the composition, tasks and work method of the placement committee for privatization of administrative services Reference: SM/08-16 ND Advice: 17-jan-17		
19	Draft national decree, containing general measures establishing the rules for (sur)name change Reference: SM/01-17 ND Advice: 22-mar-17		
20	Draft National Decree, containing general measures, amending the National Decree, national exams v.w.o., h.a.v.o., v.s.b.o. Reference: SM/02-17 ND Advice: 18-apr-17		
21	Draft National Decree, containing general measures, amending the National Decree, determining the financial provisions of the members, the substitute members and of the Secretary of the Social-Economic Council Reference: SM/03-17 ND Advice: 18-jul-17		

22	Draft National Decree, containing general measures, amending the National Decree on the supervision of aviation in connection with the setting of tariffs for services and activities Reference: SM/04-17 ND Advice: 19-dec-17	To adopt the draft decree, containing general measures after the observations of the Council have been considered
23	Draft national decree, containing general measures determining the financial provisions for the members and substitute members of the Electoral Council Reference: SM/05-17 ND Advice: 21-nov-17	To adopt the draft decree, containing general measures after attention has been given to the observations of the Council

#	Subject	Dictum
DIV		
24	Draft decision containing rules for establishing an Integrity Chamber Reference: SM/01-17 DIV Advice: 4-apr-17	In conclusion, the Council advises the government to take the above-mentioned remarks into consideration when dealing with this subject in the Kingdom Council of Ministers and in the contingent further course of the legislative procedure.

3.2 Frequent advisory comments

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

1. Financial paragraph

The 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. Discrepancy between draft and explanatory note

These comments concerned the observed differences between the draft legislation and the accompanying explanatory notes. In particular, comments were given about explanatory notes incorrectly containing norms (these should be part of the drafts) and about drafts and explanatory notes that contradicted each other.

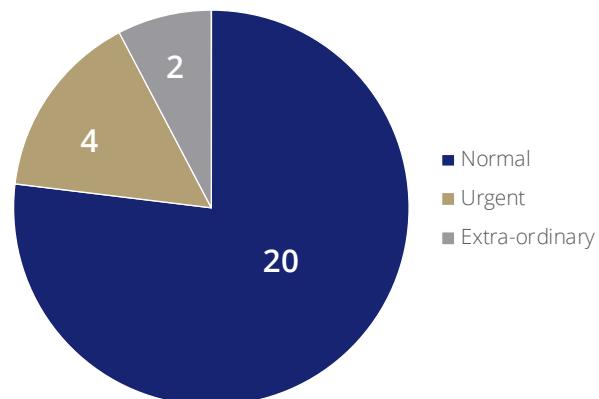
3. Consultation of advisory bodies and stakeholders

The remarks concerned incorrectly not hearing advisory bodies such as the Social Economic Council, within whose advisory tasks the subject matter falls and incorrectly not consulting the (organization of) stakeholders that were affected by the regulation.

3.3 Meetings

A total of 26 meetings were held during the year 2017, of which 20 were regular meetings, 4 were urgent meetings and 2 were extraordinary meetings chaired by His Excellency the Governor.

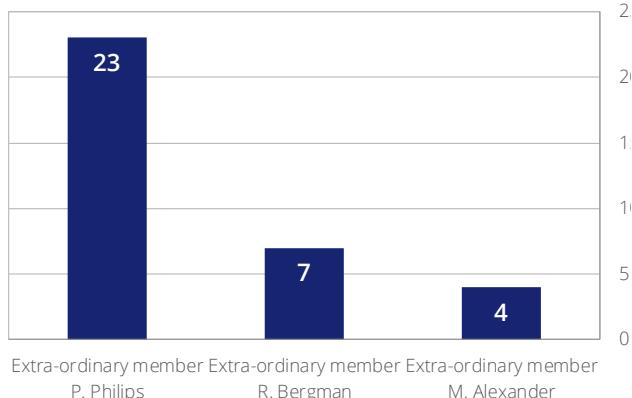
Council meetings





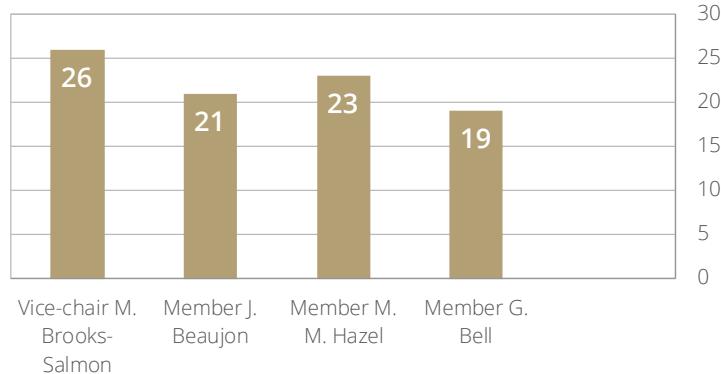
Below is an overview of the attendance of the extraordinary members of the Council:

Attendance extra-ordinary members



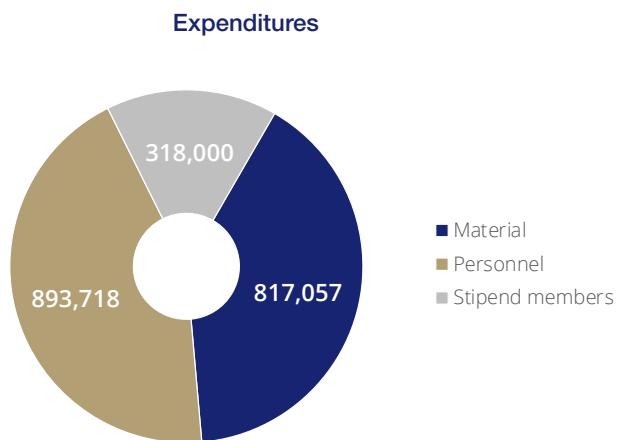
Below is an overview of the attendance of the members of the Council:

Attendance Council members



3.4 Expenditures

The total cost of advising by the Council was budgeted in 2017 at NAf. 2,028,775.00.



4. THEME: THE INTEGRITY CHAMBER

During the reporting year the Council advised on three new draft regulations pertaining to the establishment of the so-called Integrity Chamber. This concerned the draft ordinance for a General Kingdom Measure and the first and a second draft of a National Ordinance.² The second draft of the National Ordinance was discussed on the floor of Parliament and ratified on December 18th 2017. This is the second National Ordinance that was written to establish the Integrity Chamber, given that the first National Ordinance was annulled by the Constitutional Court in its decision of July 2016 for being in conflict with the Constitution of Sint Maarten.³

Because of the various draft versions that exist regarding the Integrity Chamber, there may be some uncertainty on the ultimate functioning purpose of this body. With this summary the Council wishes to provide some clarity on some key aspects of the Integrity Chamber.⁴ The recently effectuated National Ordinance Integrity Chamber will be used as a guiding principle.⁵



Background

The Integrity Chamber was introduced amidst a broad discussion on integrity. There were several studies carried out in 2014 and 2015 regarding integrity in the public sector of Sint Maarten.⁶ These reports revealed that integrity should be improved and various recommendations were made. One of these recommendations was the establishment of an Integrity Chamber, which was realized with the National Ordinance Integrity Chamber.

² Our advices of April 4th 2017 (CoA no. SM/01-17-DIV), October 23rd 2017 (CoA no. SM/14-17-NO) and November 27th 2017 (CoA no. SM/16-17-NO).

³ Ruling of the Constitutional Court of July 7th 2016, case number 2015/1.

⁴ Because this is a summary, the Council of Advices makes reference to the National Ordinance Integrity Chamber for specifics, such as exceptions, conditions and nuances.



Goals and tasks

The Integrity Chamber can be viewed as an instrument to enhance integrity in the public sector. The government has stated the following about the goals that are being pursued with the establishment of the Integrity Chamber:

"The Government intends to create the necessary preconditions in order to be advised independently and impartially regarding integrity in the public sector, as well as to better facilitate the reporting of possible wrongdoings within government, through independent administrative investigations into possible wrongdoing and to provide persons reporting these with a safe and familiar environment."⁷

The Integrity Chamber is tasked with various responsibilities to accomplish these goals. The main tasks of the Integrity Chamber are:

- The advisory task: at the request of or on their own initiative giving advice or making proposals on the general policy of promoting integrity of the country;
- The investigating task: conducting investigations into specific allegations of wrongdoing.

⁵ National Ordinance of December 18th 2017, establishing the Integrity Chamber, as well as regulating the structure, composition, tasks and authority of the Integrity Chamber, AB 2017, 41.

⁶ Reference is made to the General Audit Chamber, "Nulmeting Sint Maarten. Stand van zaken institutionele integriteitszorg 2014", 2014, Committee Integer Public Administration, Doing the right things right, 2014, PriceWaterhouseCoopers, Integrity inquiry into the functioning of the Government of St. Maarten, 2014, Transparency International, St. Maarten 2015. National integrity system assessment, 2015.

⁷ Explanatory Memorandum of the National Ordinance Integrity Chamber, pg. 31.



Organization

The Integrity Chamber is an independent administrative body with a legal personality. As a result, the Integrity Chamber is not a subordinate to a Minister and a Minister cannot give instructions to the Integrity Chamber. This degree of independence has been decided upon to ensure that the Integrity Chamber can function independently and autonomous.

The Integrity Chamber consists of three members. The body is supported in its day-to-day tasks by a secretariat. Finally, there is a Supervisory Board that has the task of supervising the functioning of the Integrity Chamber. In carrying out this task, the Supervisory Board also examines whether the Integrity Chamber applies its authority lawfully and proportionally. The Supervisory Board is also tasked with granting authorizations prior to the use of two specific investigative authorities.



Authorities

The authorities of the Integrity Chamber are linked to the aforementioned main tasks. The Integrity Chamber can perform regulatory and efficiency audits in order to carry out its advisory task. A regulatory audit is an investigation into the application and compliance with applicable regulations and procedures and their relation to the general integrity policy. An example of this is an investigation into the administrative appointment procedures. An efficiency audit is a study of the applicable regulations and procedures themselves, to verify whether they can achieve the intended objectives. In these investigations, the Integrity Chamber can be supported by experts and is authorized to request information from governing bodies.

In the context of the investigative task, the Integrity Chamber also has various authorities. Investigations into suspicions of wrongdoings can be launched on the initiative of the Integrity Chamber or based on a filed report. Everyone has the right to report their suspicion on possible wrongdoings to the Integrity Chamber. The Integrity Chamber has several authorities to request information from the governing body which is under investigation, although certain conditions apply. In such case, the Integrity Chamber can also summon persons to provide information. The Integrity Chamber has the authority to carry out searches and take samples, as well as make use of experts for the investigation.

An authorization from the Supervisory Board of the Integrity Chamber is first needed for two specific competencies of the Integrity Chamber. First of all, this would concerns the competency for an on-site investigation whereby the Integrity Chamber has access to every place and every building (with the exception of a home). The second competency for which an authorization requirement applies concerns the requisition of inspection of data and data-carriers (for example telephones and USB-sticks) and making copies of such.

The Integrity Chamber can issue a binding advice as a result of an investigation, to the administrative body within which the wrongdoing was discovered. The administrative body is then obliged to respond within four weeks to the advice, and can only deviate from the binding advice with an adequately motivated response. The Integrity Chamber is also authorized to report certain punishable acts arising from an investigation to the Public Prosecutor.



Scope

The advisory task as well as the investigative task have consequences for government institutions and their employees. The advisory task leads to the obligation of employees of an administrative body to provide requested information. In addition to this, the administrative body to which the advice or proposal is addressed is obliged to respond to this, after which the response is placed in the National Gazette.

As it pertains to the investigative task of the Integrity Chamber, administrative bodies are obliged to cooperate with the investigation of the Integrity Chamber. Also, as (previously) mentioned persons employed by these administrative bodies can be summoned to provide information, (although under certain circumstances they have the right of non-disclosure). If persons do not appear after a summons, they can then be obliged to do so by the police. If administrative bodies or persons do not comply with these obligations, the Integrity Chamber can impose a penalty order on the administrative body or the person in question.

In order to determine for whom exactly these consequences apply, the key concepts "administrative body" and "wrongdoing" must be looked at. The term "administrative body" is important for both the advisory and the investigative tasks of the Integrity Chamber. An administrative body is defined in the National Ordinance Integrity Chamber as a person or a body with public authority (with the exception of judicial bodies) or a public company. Examples of bodies with public authority are for instance the Ministries, the Parliament,⁸ the Bureau for Telecommunications and Post and the Bureau for Intellectual Property. Examples of public companies within the meaning of this National Ordinance⁹ are N.V. GEBE, Princess Juliana International Airport N.V. (PJIAE) en St. Maarten Harbour Holding Company N.V. The National Ordinance Integrity Chamber can therefore have consequences for all of these organizations and persons employed there. The same applies for other bodies that fall within the scope of the term administrative body.

The term "wrongdoing" is of importance for the investigative task of the Integrity Chamber; these investigations may only take place based upon suspicions of possible wrongdoing. Wrongdoing is defined in the National Integrity Chamber ordinance as:

"wrongdoing relates to an act or omission that is in conflict with the values and norms, legal regulations or other legal obligations that apply with regard to the fulfillment of a public office, a public function or a function as director of a public company and by which the societal interest, or the proper functioning of an administrative body is damaged or can be damaged".¹⁰

On the basis of this description, there must be in any case a violation of norms and values, legal regulations or other legal obligations of Sint Maarten in order to be able to speak of wrongdoing. Furthermore, the terms administrative body and public company are of importance for the scope of the concept of wrongdoing and therefore the field of competence of the Integrity Chamber.

⁸ Only in so far as it concerns the execution of tasks with any public authority, such as appointments. See further the explanatory memorandum to the National Ordinance Integrity Chamber, p. 40.

⁹ This is defined in Article 1, subsection f, of the National Ordinance Integrity Chamber as "a company as referred to in Article 1, subsection m, of the National Ordinance Corporate Governance with its registered office in the Country and of which the shares are partly or wholly, directly or through the intermediary of a third party, in economic or legal ownership, in the hands of the Country, or foundation as referred to in Article 1, subsection l, of the National Ordinance Corporate Governance, where a minister has the authority to decide on the matter of appointment or dismissal of the statutory director or a member of the Supervisory board or an equivalent body, or in connection with the Articles of Incorporation."

¹⁰ Article 1, subsection e, of the National Ordinance Integrity Chamber.



Conclusion

The Integrity Chamber is central in this theme. Various aspects such as the tasks, authority and scope of this body have been briefly discussed. The advisory and investigative task of the Integrity Chamber have been described as instruments to promote integrity in the public sector. The Integrity Chamber can use various authoritative powers for the purpose of these tasks, including the authority to enter buildings and the summoning of persons. The conclusion has also been drawn that the Integrity Chamber has consequences for various administrative bodies and government companies and their employees. As a result, it can be concluded that the Integrity Chamber as a new body will play a role in the constitutional organization of Sint Maarten, and thus in our society.

5. ANNEXES

5.1 Annex 1 – Secondary activities of the members in 2017

Member	Secondary activities
Mrs. Mavis Brooks-Salmon LL.M. MA <i>(Vice-chair and also member)</i>	<ul style="list-style-type: none">• Director children Catholic choir• Harbour View Owners Foundation• Now Generation Committee
Mr. Jan Beaujon <i>(Member)</i>	<ul style="list-style-type: none">• Chairman of the Board of Directors of the Nature Foundation Sint Maarten• Member of the Supervisory board of the Foundation Cooperative Funds• Board member of the Foundation for the Conservation of monuments.• Member of the Supervisory Board of the Windward Islands Bank N.V• Member of the Supervisory Board of the Windward Islands Bank International N.V.
Mr. Gaston Bell LL.M. <i>(Member)</i>	<ul style="list-style-type: none">• Member of St. Maarten Bar Association• Substitute Member of the Disciplinary Board of Lawyers Sint Maarten;• Board member of Foundation for Hope & Music Development;• Board member of Diamond Avandero Corporation N.V.;• Congregational Steward Methodist Church Sint Maarten;• Member of the Task Force Methodist Church Building Project.
Ms. Marcella Hazel <i>(Member)</i>	<ul style="list-style-type: none">• Official translator by Federal Decree• Advisor of the Community Council of South Reward
Mr. Rik Bergman LL.M. <i>(Member)</i>	<ul style="list-style-type: none">• Partner at BSZE Attorneys at Law/ Tax Lawyers St. Maarten• Board member of de University of St. Martin• Board member of the Parkinson's Foundation Sint Maarten• Member of the Disciplinary Board of Lawyers• Member of the St. Maarten Bar Association
Ms. Patricia Philips <i>(Extraordinary member)</i>	<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. Miguel Alexander LL.M. <i>(Extraordinary member)</i>	<ul style="list-style-type: none">• Commissioner of:<ul style="list-style-type: none">- Maduro & Curiel's Bank N.V. in Curaçao;- Reon Investments N.V. in Curaçao;- Samsom Curaçao N.V. in Curaçao;- United International Bank N.V. in Curaçao;- The Windward Islands Bank N.V. and- The Windward Islands Bank International N.V.• Director of eighteen (18) "offshore" partnership companies and one belonging to the BCD/BORON Group• Director/owner of:<ul style="list-style-type: none">- Cazalex Holding B.V.;- Notarischpraktijk Alexander N.V.;- Cazalex Pensioenen N.V.- Alexander Corporate Legal Advisors B.V.;- Alexander & Baaten Legal Services B.V. (10% shareholder)• Director of:<ul style="list-style-type: none">- Foundation SONA;- Foundation Cazalex;- Foundation Private Fund Cazalex;- Foundation Financing Task Force Tax Treaties- Foubdation Pension Fund Chr. A. Peterson• Advisor to Notary office Kleinmoedig Alexander in Curaçao

5.2 Annex 2 – Established dicta

Dicta of the Council of Advice

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

I. DRAFT NATIONAL ORDINANCE

1. To send the draft ordinance to Parliament.

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

2. To send the draft ordinance to Parliament after attention has been

paid to the observations of the Council.

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

3. To send the draft ordinance to Parliament after the observations of

the Council have been considered.

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

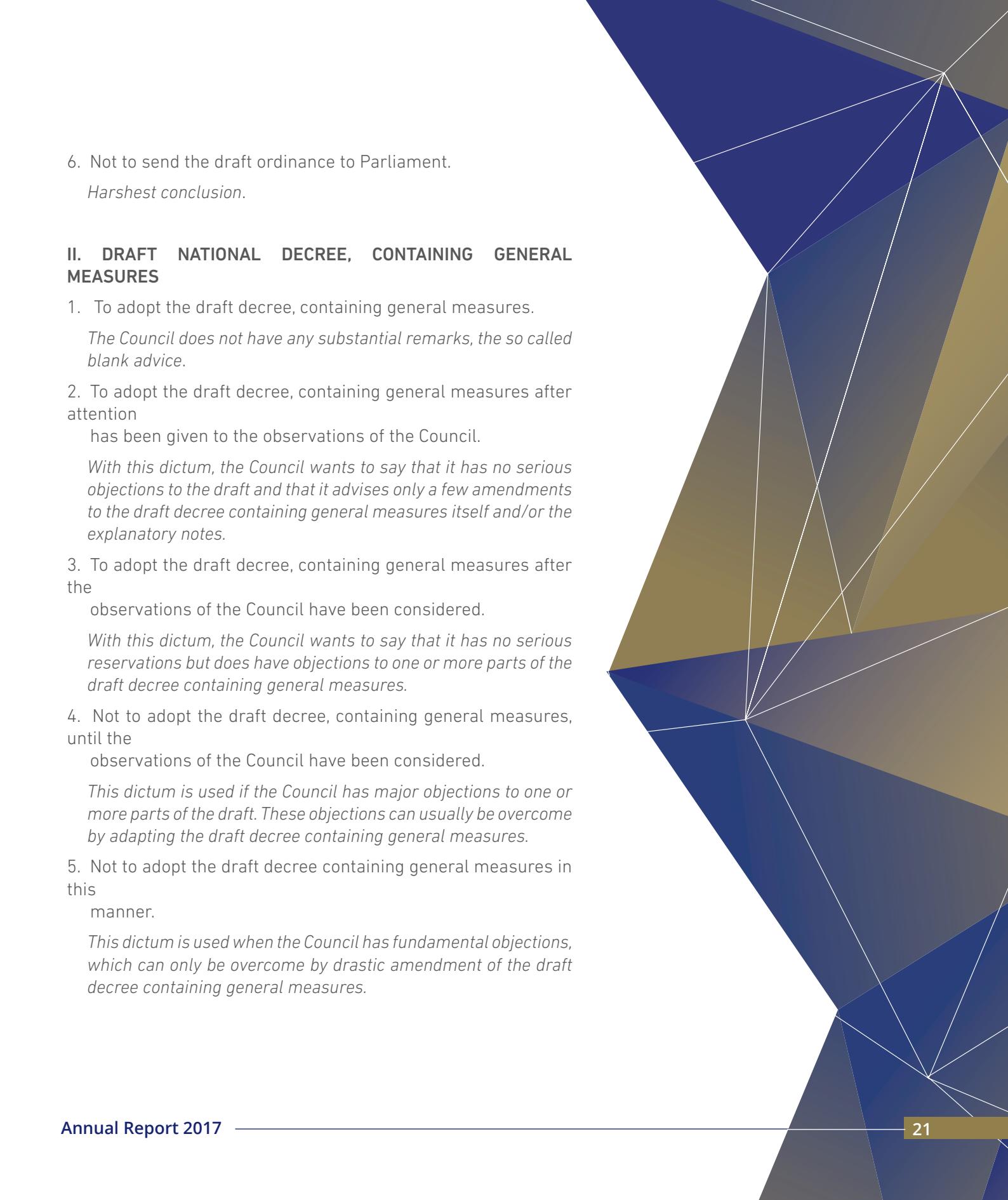
4. Not to send the draft ordinance to Parliament, until the observations

of the Council have been considered.

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

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

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

- 
6. Not to send the draft ordinance to Parliament.

Harshest conclusion.

II. DRAFT NATIONAL DECREE, CONTAINING GENERAL MEASURES

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

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

2. To adopt the draft decree, containing general measures after attention

has been given to the observations of the Council.

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

3. To adopt the draft decree, containing general measures after the

observations of the Council have been considered.

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

4. Not to adopt the draft decree, containing general measures, until the

observations of the Council have been considered.

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

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

manner.

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

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- 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.