



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

RvA No. SM/13-15-LV

Subject: Draft National Ordinance adopting the budget of the Country of Sint Maarten for the year of service 2016 (National Ordinance on the 2016 Budget) (your reference number LV-15/0014).

Advice: With reference to your request dated December 31, 2015 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof at the meetings of the Council on January 12 and 19, 2016, and the adoption thereof at the meeting of the Council on January 19, 2016, the Council informs you as follows.

According to the considerations, the purpose of the draft is to adopt the budget of the Country for the year of service 2016. In connection with the financial stability of the Country, it is also proposed to give this National Ordinance retroactive effect from January 1, 2016.

The Council endorses the plans of the current Government to put the past financial situation behind them. The Council also endorses the Government's desire to arrive at a realistic and balanced budget.

1. Budget cycle

According to the Explanatory Memorandum to the National Accountability Ordinance, the budget cycle does not only consist of the preparation and implementation of the budget, but also of accounting for it. This is an ongoing process that is coordinated and supervised by the Minister of Finance.¹ For the purpose of this cycle, the National Accountability Ordinance contains several procedural provisions, which also include dates. In view of the precarious financial position of the Country, the Council advises

¹ See the general part of the Explanatory Memorandum to the National Accountability Ordinance.



to comply strictly with these procedural rules and corresponding dates.

The Council asks that attention be paid to this.

2. Financial statements

In the context of aforementioned budget cycle, the financial statements also play a very important role. In the years 2014 and 2015, the Council did not receive any request for advice on the financial statements of 2013 and 2014. Due to the absence of these financial statements, an important source of information is lacking, which, together with the accompanying explanatory notes, give such insight into both the financial position and the income and expenses of the public sector that a sound judgment can be formed in this respect. This makes it difficult to analyze and assess the proposed changes within a financial and economic context. For the purpose of sound financial management, the Council advises to affectuate to paragraph 4 of the National Accountability Ordinance. This will not only clarify the financial situation of the Country to Parliament but to the residents of Sint Maarten as well.

The Council asks that attention be paid to this.

3. Legal requirements concerning the budget

The National Ordinance adopting the budget, including the Explanatory Memorandum must comply in full with the provisions mentioned in the Kingdom Act on the Financial Supervision of Curaçao and Sint Maarten, the Constitution and the National Accountability Ordinance. It is important that the budget is balanced in its entirety, and that the budget has been prepared in such a way that it is clear and verifiable.

The Council notes that the explanatory notes are very concise and lack a clear structure. Both Article 15, second paragraph, subparagraph b, of the Kingdom Act on the Financial Supervision of Curaçao and Sint Maarten and Article 14 of the National Accountability Ordinance set requirements on the explanatory notes. By not explaining chapters, features and, in particular, the vast majority of the income and expenses, the budget does not meet aforementioned legal requirements. Moreover, the absence of adequate explanatory notes is the reason that certain items or policy choices can be assessed less accurately and substantively. Therefore, the Council advises to provide the budget with comprehensive and adequate explanatory notes per ministry, which meet the legal requirements.



The Council also advises to add the policy intentions of the Government to the existing explanatory notes. The Explanatory Memorandum to the National Accountability Ordinance states that the budget is based on the policy intentions of the Government. Although the explanatory notes to the multi-annual budget mention some target points within the framework of cuts of the current Government, this does not provide any clarity as regards future plans and the costs or income thereof.

Besides the lack of an adequate explanation, the Council also notes that large part of the additions to the budget as referred to in Article 12, first paragraph, of the National Accountability Ordinance is lacking. Thus, the budget lacks an overview of and insight into the staff costs, the loans granted, the guaranteed loans and other guarantee obligations, the concessions granted, the service provision agreements entered into with other entities of the Country and an overview of the situation of the other entities of the Country that form part of the public sector. The absence of these additions make the budget incomplete. This makes it impossible to get a complete picture of the financial situation of the Country.

The Council therefore advises to still add aforementioned lacking information to the budget.

4. The multi-annual budget

Based on Article 13 of the National Accountability Ordinance, a multi-year budget forms a compulsory part of the budget. By means of this multi-annual budget, the effects of policy over several years can be elaborated on, as they are not limited to one year of service. Measures introduced in a year of service will have effects over the years, which, furthermore, are not static and should be monitored continuously.² Although explained relatively comprehensively, the Council notes that the actual multi-annual estimate is very limited and does not comply with Article 13, second paragraph, second sentence of the National Accountability Ordinance. Thus, an entire paragraph is dedicated to the collection of funds in the context of hazard games. According to the explanatory notes, however, these costs are only related to the year 2016 and, therefore, do not form part of a multi-annual budget in the opinion of the Council.

² See page 2, second paragraph, of the Explanatory Memorandum to the National Accountability Ordinance.



The Council advises to adjust the multi-annual estimate regarding to Article 13 of the National Accountability Ordinance and to mention and explain in detail only the costs actually spread over several years.

The Council also advises, although the Minister of Finance is not obligated to do so, to draw up the ministerial order referred to in Article 13, third paragraph, of the National Accountability Ordinance. The Council is of the opinion that such an order will benefit the structuring of the multi-annual budget.

The multi-annual estimate is based on a financial future aimed at, on the one hand, a very conservatively estimated level of expenses and a strict austerity policy and, on the other, an estimate of only income that will be obtained (almost) with certainty.³ The latter is an attempt to deal with the past in which deficits that arose in the draft budgets were covered by entering results of initiatives that still had to be taken but that, subsequently, could not be realized in time, also because of the limited term of previous governments.⁴ In the multi-annual estimate, these intentions are applied to the main points of attention from the instruction of the Council of Ministers of the Kingdom to the authority of Sint Maarten of September 8, 2015 to resolve the payment arrears arisen, the setoff of actual deficits in the current account, the full insertion of the healthcare and pension expenditure and the taking of measures for a sustainable pension and social security system to avoid new payment arrears.⁵ However, the Council notes that all these plans are at a very early stage. Many parties are involved in the implementation of aforementioned intentions, which often require a legal basis, so that the Council does not anticipate realization in the short term. The Council is of the opinion that the plans for the budget year 2016 also are not very concrete for the time being, so that the Government does not appear to be able to comply with its own intentions.

To illustrate the above, the Council refers to the intentions with respect to the statutory rate for the pension premium. The Government intends to adjust this premium with retroactive effect from 10-10-2010 to the rate actually paid. Such an intention will entail an amendment to a national ordinance. A procedure for adopting a national ordinance is time-consuming, especially since

³ See page 8 of the explanatory notes to the draft budget year of service 2016.

⁴ *Ibid.*

⁵ See "AB" [*Official Gazette*] 2015, No. 28 of Bulletin of Acts and Decrees 2015, No. 343



several advisory boards are involved in such a proposal. Furthermore, the Council questions the legal feasibility of such a proposal.

Also with regard to the resolution of the payments arrears to both APS and SZV, the Council questions the feasibility of the proposals inserted in the multi-annual budget. All the more so since the sale and leaseback agreement with SZV on the new administrative office was still proposed for APS last year. The Council finds no evidence in the budget that suggests that this agreement will be implemented this year, as opposed to last year. In addition, the Government considers the settlement with Curaçao from the estate of the former Netherlands Antilles a possibility to repay payment arrears.

As the instruction of September 8, 2015 states that this settlement is very uncertain,⁶ the Council observes that this intention to generate income also is not very concrete.

Another example that may be mentioned in this context is the collection of payments arrears of casinos. It was established by court decision that these funds should be recovered under civil law. It concerns an amount of NAf. 12 million. This amount covers large part of the 2016 budget surplus. In view of the payment arrears and the approach in this matter, this amount is of great importance. Although the Explanatory Memorandum states that the Collector is authorized to collect, it does not mention anything about the progress of this process. The Council is of the opinion that there are many factors that can complicate the actual collection of these funds and advises the Government to explain more exhaustively what measures are/will be taken to guarantee/realize this income in 2016.

The Council asks that attention be paid to this.

An additional proposed measure to generate additional income pertains to tax compliance. Such additional income is shown in the table of the multi-annual estimate as from 2017.⁷ The Council is of the opinion that, in the coming years, the Government should give priority to improving compliance. Although it is explained that the Tax Department is working on a more intensified approach to tax compliance, the Council notes that no basis is provided to assume that such income will actually be realized. The Council advises to elaborate and define the measures within the framework

⁶ See the Explanatory Memorandum to AB 2015, No. 28, page 13.

⁷ See page 12 of the explanatory notes to the draft budget year of service 2016.



of tax compliance in this budget. The Council also believes that every effort should be made to support the already heavily burdened Tax Department. To achieve this, additional staff should be hired, investments should be made in the further training of staff and the Department should not be charged with duties other than its statutory duty.

The Council asks that attention be paid to this.

5. Intentions versus figures and budget items

As mentioned in the preceding paragraph, the multi-annual budget is based on a very conservatively estimated level of expenses and a strict austerity policy. The Government describes that it intends to implement this by measures, such as a hiring freeze and strict monitoring of expenses, such as emoluments of staff, tightening of the official trips policy, a reduction of central costs and, in general, exercising restraint when making purchases.⁸The Council notes that these intentions are not supported by means of corresponding conservative figures in several chapters of the budget. Thus, for example, the staff costs still increase for many ministries, sometimes by as much as 45%. Moreover, the items “bonuses” and “miscellaneous reimbursements and allowances” also indicate an increase for the majority of the ministries.

The Council advises to explain or correct this discrepancy between the intentions and the figures.

6. Other income-increasing measures in the current account

The income in the current account provides a clear overview of the expected income for 2016. In terms of percentage, these items decrease or increase considerably. The Council noticed that the majority of these increasing or decreasing income items is related to a legally embedded duty or authority, such as the granting of a permit, the collection of taxes or the issue of documents by the Government. By way of illustration, the Council mentions the remarkable increase of Naf. 1,293,000 for residence permits. It is not clear to the Council whether the Government expects a significant increase in applications for or the issue of residence permits for 2016, or whether the Government intends to increase the charges for this permit, or whether there are other factors that will lead to this significant increase in income.

The Council advises to explain how the Government has arrived at estimating an increase or decrease in this income.

⁸ *Ibid.* page 8.



7. “COLA”

The Council notes that a price indexation/COLA has been included for the benefit of Parliament and the High Councils of State. However, the Council notes that no price indexation/COLA has been budgeted for any of the ministries.

The Council advises to explain this policy choice or to correct this inequality.

**8. The budget per ministry
Parliament and High Councils of State**

With regard to Parliament and the General Audit Chamber, the Council notes a sharp rise in staff costs.

The Council advises to explain this.

With regard to the entire economic category, the Council notes that allowances, bonuses and benefits all increase significantly.

As mentioned earlier in this advice, the Council observes a discrepancy with the starting points worded in the multi-annual budget. Furthermore, a price indexation/COLA has been budgeted for Parliament and the High Councils of State. The Council asks that attention be paid to this.

The Council also advises to explain why the telephone costs increase by NAf. 100,000 and how the significant reduction on the item “rent buildings and spaces” is realized.

Furthermore, the Council finds it remarkable that the Social and Economic Council has been budgeted at zero since 2014.

The Council advises to clarify this further. In addition, the Council advises to place the Social and Economic Council in another chapter, as, according to Article 79 of the Constitution, the Social and Economic Council is a permanent advisory board and not a High Council of State.

Ministry of General Affairs

With regard to the Ministry of General Affairs, the Council notes that the staff costs of the Office of the Minister increase by NAf. 290,407. The Council advises to explain this increase, also in view of the cost-cutting measures. This also applies to the increase in staff costs of the Public Service Center by NAf. 134,146, the Security Service by NAf. 2,894,436 and the Administration and Management Support Department by NAf. 185,285, and the increase in temporary staff costs of the Department of Legal



Affairs and Legislation and the Department of the Interior and Kingdom Relations. The Council also notes that such increases cannot be described as “minor”, as is done on page 14 of the explanatory notes to the draft budget for the year of service 2016. The Council asks that attention be paid to this.

The Council also advises to explain why the budget of the Integrity Chamber is set at zero. Within the framework of the intentions to cut back on central costs (mains services and communications), the Council is surprised that the budget for electricity, water and communications increases by about NAf. 1,650,000 for the year 2016.

The Council advises to explain this further.

In the advice of the Council on the amendment of the 2015 budget, reference was made to the intentions of the Government to expand the capacity of the Department of Legal Affairs and Legislation for the benefit of the setup and organization of the Integrity Chamber.⁹

The Council asks the Government to explain whether these costs are still embedded in this proposal and also asks to explain how the other operating costs of the Integrity Chamber are absorbed in budgetary terms.

Ministry of Finance

In line with the starting points of the multi-annual budget, drastic cuts are made in the staff costs within the Ministry of Finance. Large part of the multi-annual estimate puts emphasis on income derived from the compliance with tax legislation.

The Council asks the Government to explain how this compliance can be realized, while less investments are made in staff. As mentioned earlier in this advice, the Council is of the opinion that this compliance can only be achieved through an investment in the quantity and quality of the staff of the Tax Department. The fact that this budget reflects the opposite, gives the Council rise to great concern.

The Council asks that attention be paid to this.

Ministry of Justice

Page 15 of the explanatory notes to the draft budget for the year of service 2016 states that the under spending at other ministries will be beneficial to the overspending at the Ministry of Justice.

⁹ RvA No. SM/10-15-LV of September 15, 2015, page 4.



The Council advises to explain this argument by means of a substantiated figures, as the starting point for the multi-annual budget and the advices of the Board for Financial Supervision from the year 2015 are related to spending savings within the ministries on payment arrears.

The Council advises to explain why the staff costs of the Guardianship Board increase significantly and on which the budget item subsidies and contributions is spent, since this item amounts to NAf. 14 million.

Ministry of Education, Culture, Youth and Sports

The explanatory notes on pages 15 to the draft budget for the year of service 2016 suggest that priority is only given to trainees and school bus transportation.

The Council considers this a matter of concern and advises to explain this further.

In addition, the Council also considers it a matter of concern that the material costs of both the Department of Education and the Examinations Bureau are significantly reduced. The Council advises to explain whether the consequences hereof can be foreseen.

The Council also notes that the item “student loans granted” is set at zero and asks to clarify this, as the Country grants scholarships and study loans.

Ministry of Health, Social Development and Labor

The Council advises to explain why the ministry had no expenses in respect of the rent of buildings and spaces in 2015, whereas these expenses are budgeted for 2016. In addition, the Council requests an explanation of the cancellation or failure to estimate the items “free legal assistance”, “government contribution SZV” and the contribution to the “AVBZ” fund. Also with regard to reducing the material costs of the Ministry of Health, Social Development and Labor, the Council advises to explain whether the consequences hereof for the population can be foreseen.



Ministry of Tourism, Economic Affairs, Transportation and Telecommunications

With regard to the Ministry of Tourism, Economic Affairs, Transportation and Telecommunications, the Council notes a drastic decrease in staff costs. With regard to this ministry, the Council advises to explain why the item “rent buildings” has been budgeted at zero. In the opinion of the Council, such a budget is practically impossible.

Ministry of Public Housing, Spatial Planning and the Environment

The Council notes that the figures in the column “budgeted expenditure 2015” on pages 21 through 25 of the budget do not match the budget of 2015.

The Council advises to correct this numerical discrepancy.

The Council also notes that on page 17 of the explanatory notes to the draft budget for the year 2016, it is unclear whether the calamity fund has been budgeted. The Council considers such phrases undesirable for a final draft of the budget and therefore advises deleting this phrase.

In addition, it is unclear to the Council why the filling of vacancies leads to an increase in the budget. The Council advises to clarify whether such vacancies had not been fully included in the workforce plan in previous years.

The Council also advises to explain why the items “rent buildings” and “telephone costs” are budgeted at zero. In the opinion of the Council, such a budget is practically impossible.

9. Capital account expenditure

Regarding the capital account, the Council notes first of all that page 30 of the budget indicates that, in 2015, an amount of NAf. 84.6 million was budgeted for capital expenditure. However, Article 2, third paragraph, of the National Ordinance on the 2015 Budget sets the capital account expenditure at NAf. 111,031,451.-. The Council advises to correct or further explain this discrepancy.

The capital account expenditure for the 2016 budget is estimated at NAf. 79.8 million. These expenses are not explained at all. Moreover, only total amounts are reflected. Because of this, the Council cannot fully assess this capital account expenditure. In



the opinion of the Council, the explanatory requirements set out in Article 15, second paragraph, subparagraph b, of the Kingdom Act on Financial Supervision Curaçao and Sint Maarten and Article 14, third paragraph, of the National Accountability Ordinance are not met.

The Council advises to add this explanation to the budget, paying particular attention to the following points:

- The capital expenditure for the Facilities Department has been budgeted at NAf. 17 million. The table with the budgeted expenditure for the year 2015 shows that, in that year, an amount of NAf. 3.6 million was budgeted. However, in the budget for 2015, this amount is NAf. 5.2 million.
- The capital expenditure for the Police Force has been budgeted at NAfl. 10 million. The table with the budgeted expenditure for the year 2015 shows that, in that year, an amount of NAf. 2 million was budgeted. However, in the budget for 2015, this amount is NAf. 9.2 million.
- Both the Department of Education and the Management Department of the Ministry of Public Housing, Spatial Planning, the Environment and Infrastructure did not have any capital expenditure in 2015, while they are now reflected in the budget for several millions.
- The expenses of the New Works Department decrease very significantly from NAf. 34 million to NAf. 2 million.
- The capital expenditure for the Tax Support Department, the Department of Education, the Department of Economic Permits, the Bureau of Statistics and the Inspectorate of Economic Affairs disappears entirely.
- The budgeted expenditure in 2015 for the Tax Support Department, Prison and the Detention Center, Meteorology and the Aviation and Shipping Department does not correspond with the amounts for capital expenditure shown in the budget of 2015.
- The difference of the amount stated at in the budget 2016 and 2015 for the budget item Department of Information, Communication and Technology of NAf. 850,000 is incorrect and apparently contains a calculation error, as the difference between NAf. 850,000 and NAf. 700,000 is NAf. 150,000.

10. Capital account income

It is unclear to the Council how one arrived at the amount of total investments of NAf. 79,539,149. This amount must be made available to carry out the prioritized projects and investments. Page 31 of the budget shows that this amount consists of a loan, funds released by the depreciation for 2016 and remaining funds on loans of projects not carried out in previous years.



The explanatory notes do not provide further insight into the capital account income. As the income is currently being reflected, it is impossible for the Council to see what investments, acquisitions or projects are carried out for this amount. Therefore, the Council advises to better explain this income, focusing on the breakdown of the amount.

11. Other observations

- Page 3 of the preface states that, in fact, Sint Maarten is on its own, because the partners within the Kingdom do not provide proper help and assistance.
The Council advises to further explain this sentence.
- Page 4 of the preface states that the Board advises the Government to sell assets of the Country. The Government is looking for ways to make such sales.
The Council asks to explain these proposed sales in greater detail and, where possible, to specify them.
- Page 11 of the explanatory notes to the draft budget for the year of service 2016, subparagraph h, mentions an agreement concerning water reserves with GEBE.
The Council advises to clarify this and, where necessary, to complement this.
- The Council advises to explain policy choices reflected in the context of subsidies on the “state of current transfers” in greater detail. The Council believes that, in times of financial stormy weather, we need to look critically at all expenses and, therefore, also to the granting of subsidies.
- The “state of current transfers” mentions institutions receiving subsidies. The Council notes that this list also contains departments and divisions of the Government, such as the Guardianship Board. This list also contains institutions that are already mentioned in the actual budget, such as the Council of State. In addition, it is striking that this list contains institutions, such as the Electoral Council, the Constitutional Court and the Joint Court of Justice.
The Council asks to explain why such institutions receive subsidies, but are not included in the actual budget. In addition, the Council notes that remuneration of the members of the Electoral Council based on Article 12 of the National Ordinance on Registration and Finances Political Parties should be adopted by national decree containing general measures. The Council asks the Government to indicate in the Explanatory Memorandum whether it intends to prepare such a regulation.
- The “state of current transfers” mentions Turning Point twice.



The Council advises to explain this. In addition, the Council also asks for an explanation why important institutions, such as the Nature Foundation, the Mental Health Foundation or the Rent Assessment Committee, are no longer subsidized.

- Although the 2015 budget still mentions the income and expenses of the Office of Telecommunications and Post, this office does not appear in the budget of 2016.
The Council advises to examine and explain this.
- The “list of properties” contains an overview of the car fleet. However, this list also contains cars that have not been purchased but leased. If cars are leased, they are not owned. The Council advises to adjust the list accordingly.
- The Council notes that the car fleet is seriously outdated. This brings with it the necessary maintenance costs and future replacement costs. The Council asks to clarify whether this is taken into account for the future.
- The Council also notes that the Country owns a relatively large number of cars. The Council advises to verify whether costs can be saved with respect to these cars, *inter alia* by critically examining which department or division actually needs a car. The Council asks that attention be paid to this.
- In substantive terms, the “state of the staff to be remunerated” basically is an overview of the staff costs referred to in Article 12, subparagraph b, of the National Accountability Ordinance. The Council advises to correct this.

12. Legal-technical and editorial comments

The annex contains the comments of a legal-technical and editorial nature, which form an integral part of the advice.

13. Conclusion

In conclusion, the Council asks the Government to send the draft National Ordinance to Parliament after have the observations of the Council have been considered.

Thus adopted at the meeting of the Council of January 19, 2016.

The Secretary
[was signed:]

Mr. *mr.* A.G. Baly

The Vice-Chair
[was signed:]

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

[Stamp:]
COUNCIL OF ADVICE
St. Maarten



ANNEX to the advice of January 19, 2016, RvA No. SM/13-15-LV

Comments of an editorial and legal-technical nature

Both the draft and the Explanatory Memorandum contain a number of editorial and legal-technical imperfections. The Council gives the following non-exhaustive examples.

- a. The last sentence of Article 5, third paragraph, mentions “can enter into force” twice. The Council advises to correct this.
- b. As Article 5 deviates, from the standard entry into force as set out in Instruction 135 of the Legislative Drafting Instructions of Sint Maarten (hereinafter: LDI), the Council advises to explain this entry into force.
- c. The Ministry of Education, Culture, Youth and Sports, the Ministry of Public Health, Social Development and Labor and the Ministry of Tourism, Economic Affairs, Transportation and Telecommunications have been given a name in the columns on pages 13 through 16 and pages 28 through 31 other than stated in the National Ordinance on the Setup and Organization of the National Government. The Council advises to adjust this in the entire budget.
- d. The “state of current transfers” states that subsidies are granted based on an island ordinance. The Council advises to adjust this wording to the current political situation.
- e. The recapitulation on page 33 of the budget makes mention of a negative balance. In the opinion of the Council, this rather concerns a positive balance. The Council advises to adjust this wording.
- f. The general considerations talk about 2015 as being a year that is yet to come. The Council advises to adjust this wording.
- g. The Council advises to indicate the Netherlands Antillean guilders by using the currency symbol “Naf.” in the entire budget, including its annexes, in accordance with LDI 59, second paragraph.