Mission and Vision of the Social Economic Council

At the meeting of Thursday, October 23rd, 2014, the Council defined the following mission and vision for the advisory body.

Mission:

To objectively advise government towards sustainable development for St. Maarten.

To provide strategic advice with content that will change the dynamic of policy discussions.

To educate the Social Economic Council (SER) board members and staff in order to improve the functioning of the SER.

Vision:

To promote sustainable development, with the aim of achieving an improved quality of life for the people of St. Maarten.
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As Chairperson of the Social Economic Council (SER) of Sint Maarten, I am honored to present to you the annual report of the SER for the year 2015.

The annual report 2015, covers the period from January 1st up to and including December 31st, 2015. In this annual report, we have outlined the activities and achievements of our fourth year1 of operation.

In 2015, the Council continued with its mission statement by advising the government on two solicited advice. The first advice concerned the national decree, containing general measures, regarding the price indexation National Ordinance Accident Insurance and National Sickness Insurance Ordinance 2015. The second advice dealt with the national decree, containing general measures, regarding the expansion of General Insurance Special Medical Costs care and elderly care.

The SER also submitted two unsolicited advice in the year under review. The advice titled ‘Boost Sint Maarten’ concerned an introduction of a Conditional Cash Transfer program (CCT). The aim is to reduce poverty and to stimulate the human capacity development of the poor at the same time. In another advice, the SER also looked at pros and cons of the Turnover Tax (TOT). SER advised government not to raise the rate of TOT to meet future budget demands on the revenue side. For an elaborate explanation on the abovementioned advices, I refer you to the appendix.

Another aspect of the SER, is the organization of public conferences and workshops on socio-economic matters of concern. In October the SER took part in the ‘Information Village’ which was held at the Festival Village on Pond Island. The Information Village was organized by the High Councils of State in collaboration with the seven Ministries of government. The event was held to raise more awareness amongst the public on the role and responsibilities of the various government departments, High Councils and the SER. Additionally, in collaboration with the University of St. Martin (USM), the SER organized a lecture titled “Education as an Emancipation tool in a Hospitality based island”.

Looking back on a productive year, the SER will continue to produce high quality advices. As the institution grows we aim to be innovative in our thinking to be able to respond to changes in society and the social partners. Our motto is to keep moving forward.

Mrs. Oldine V. Bryson-Pantophlet
Chairperson of the Social Economic Council of Sint Maarten

1 The first board of the SER was appointed on May 1st, 2011.
1.1 Institution.

As part of the Constitution of the Country Sint Maarten and as one of the required organic national ordinances, on October 10th 2010, the National Ordinance Social Economic Council (SER) (AB 2010, GT no.19) became effective. Article 79 in the fifth chapter of the Constitution stipulates the legal basis for the permanent advisory councils.

The SER, as an advisory and consulting body of employers’ and employees and independent experts, wants to make a contribution to the social affluence of Sint Maarten.

1.2 Advisory Task.

In accordance with article 2 paragraph 1 of the National Ordinance Social Economic Council, the task of the SER is to advise the Government on important topics of social economic nature. On the basis of the National Ordinance Social Economic Council (AB 2010, GT no. 19) the Council provides its advice upon request of one or more Ministers. The Council may also provide unsolicited advice to government whenever the Council deems it necessary.

Moreover, within the scope of its advisory function, the SER employs a broad-based concept of welfare. Broad based support for the social-economic policy is essential for a stable and enduring development of our country. During the SER board meetings, the aim is to reach consensus regarding social-economic issues that otherwise, in a separate setting, would be conducive to divergent opinions and potential disputes that could have a negative effect on the implementation of policy drafts or statutory regulations.

1.3 Operating Procedure and Objective.

The SER is a tripartite advisory body that, in the process of bringing about its advice, works conscientiously in order to render a realistic account of its viewpoints on the situations in question in our society, viewpoints that have significant implications. The implications from the legal, financial and social-economic perspective are directives in this framework.

As an advisory and consultative body to employers, employees and independent professionals, the SER wants to contribute to the societal welfare by arriving at mutual consensus regarding issues in the social-economic sphere. In the process, the SER strives for quality and broad support: a high degree of expertise combined with broadly accepted agreement and social support.
2.1 Composition

The National Ordinance Social Economic Council, article 3 provides that the Council consists of nine members, including three representatives of employers ‘organizations, three representatives of employees’ organizations and three independent members (independent experts). The independent members are nominated by the Minister of General Affairs. A substitute member is appointed for each member. All eighteen Council members are appointed by national decree.

Mr. Eustaquio Richardson representing the Chamber of Commerce & Industry (COCI), stepped down as a SER member on January 14th, 2015. Mr. Richardson was dismissed by way of national decree due to a function that was incompatible with membership in the SER. Mr. Ajay Rawtani, was appointed as a member on behalf of COCI and replaced Mr. E. Richardson on the Council. Ms. Brenda Brooks was appointed as the substitute member on behalf of COCI.

On February 24th 2015, member William Reed of the Windward Islands Civil Servants Union and Private Sector Union (WICSU/PSU) celebrated his 70th birthday. On December 15th, 2015, member Elaine Gumbs-Vlaun also celebrated her 70th birthday. Pursuant to the stipulation in article 8 sub b of the National Ordinance Social Economic Council, Mr. Reed and Mrs. Gumbs-Vlaun were relieved from their duties in the SER due to them having reached the age of seventy. Mr. Peter van Dort, a substitute member representing the employer’s association, Sint Maarten Hospitality and Trade Association (SHTA), resigned as of October 1st, 2015.

As of December 31st, 2015 the composition of the Social Economic Council was as follows:

<table>
<thead>
<tr>
<th>Chairwoman</th>
<th>Mrs. Oldine Bryson-Pantophlet</th>
<th>Independent expert</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice Chairman</td>
<td>Mr. Dwight Williams</td>
<td>Independent expert</td>
</tr>
<tr>
<td>Expert</td>
<td>Vacant</td>
<td>Independent expert</td>
</tr>
<tr>
<td>Members</td>
<td>Mr. Stanley Lint</td>
<td>COCI</td>
</tr>
<tr>
<td></td>
<td>Mr. Ajay Rawtani</td>
<td>COCI</td>
</tr>
<tr>
<td></td>
<td>Vacant</td>
<td>WICSU/PSU union</td>
</tr>
<tr>
<td></td>
<td>Mrs. Eveline Henriquez-Dijkhoffz</td>
<td>SHTA</td>
</tr>
<tr>
<td></td>
<td>Mr. Bienvenido Richardson</td>
<td>UFA union</td>
</tr>
<tr>
<td></td>
<td>Mr. Theophilus Thompson</td>
<td>WIFOL union</td>
</tr>
<tr>
<td>Substitute Members</td>
<td>Mrs. drs. Shirley Gregoria-Pantophlet</td>
<td>WIFOL union</td>
</tr>
<tr>
<td></td>
<td>Mr. Aurillio Baly</td>
<td>WICSU/PSU union</td>
</tr>
<tr>
<td></td>
<td>Mr. Alberto Bute</td>
<td>UFA union</td>
</tr>
<tr>
<td></td>
<td>Ms. Brenda Brooks LL.M.</td>
<td>COCI</td>
</tr>
<tr>
<td></td>
<td>Mr. Robbie Ferron</td>
<td>SHTA</td>
</tr>
<tr>
<td></td>
<td>Vacant</td>
<td>SHTA</td>
</tr>
<tr>
<td></td>
<td>Mr. ir. Damien Richardson</td>
<td>Independent expert</td>
</tr>
<tr>
<td></td>
<td>Mrs. Mandy Daal-Offringa MSc.</td>
<td>Independent expert</td>
</tr>
<tr>
<td></td>
<td>Ms. drs. Linda Richardson</td>
<td>Independent expert</td>
</tr>
</tbody>
</table>
2.2 Remuneration

In accordance with article 22 of the National Ordinance Social Economic Council, the members are entitled to a monetary compensation. Their stipend is further explained in the National Decree, containing general measures, from February 1st, 2012 concerning the financial provisions of the members, their substitutes and the Secretary-General of the Social and Economic Council.

In September 2015 the Social Economic Council submitted a proposal to the government to amend the National Decree, containing general measures, regulating the monetary provisions of the members, their substitutes and the Secretary-General of the Social Economic Council. The draft National decree, containing general measures, relating to the monetary provisions is currently at the Legal Affairs & Legislation department for review.

<table>
<thead>
<tr>
<th>Budget post</th>
<th>Budget 2015</th>
<th>Actual expenditure</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remuneration</td>
<td>ANG 296,000,-</td>
<td>ANG 296,000,-</td>
<td>0.</td>
</tr>
</tbody>
</table>

2.3 Council Meetings

In general, the Council meets twice a month, on the second and fourth Thursday of the month. However, the Chairperson shall convene the Council whenever he/she deems it necessary or appropriate, stating the matters to be discussed. The Council meetings are held in the conference room of the SER office, located in the Harbor View Office Complex in Philipsburg.

In the year under review, the Council has met a total of 20 times. From those meetings, 1 was a plenary session and 1 was an extraordinary session. The average attendance rate for all meetings in 2015 was 70%.

Graph of attendance by board members.
3.1 Personnel

In accordance with article 11 of the National Ordinance Social Economic Council, the secretariat is headed by the Secretary-General. Mr. G.M.C. Richardson is the Secretary-General of the Social Economic Council and has served in this capacity since January 2012.

In accordance with article 11 paragraph 3 of the National Ordinance Social Economic Council, the staff of the secretariat is suspended or dismissed by national decree, upon the Council’s recommendation.

The current formation of the secretariat comprises of the functions listed below. This totals 6 functions of which 4 were filled full time in 2015.

In July 2015 the Legal advisor was given an honorable discharge.

On August 17th, 2015 the National Decree, containing general measures, of May 4, 2012 regulating the establishment and organization of the secretariat of the Social Economic Council was revised.

As per that date, the formation of the Secretariat of the Social Economic Council was as follows:

<table>
<thead>
<tr>
<th>Nr.</th>
<th>FTE</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Secretary-General</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>Legal advisor</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>Policy advisor</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>Policy worker secretariat</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>Administrative worker</td>
</tr>
</tbody>
</table>
3.2 Performance Management

With regard to the performance management, the SER functions similar to the government. Performance management is a concept, whereby the performance and competences of staff members are guided. The end result of performance management is to let personal achievements and developments fall in line with the mission, vision and strategy of the advisory body.

In the year under review, the staff was evaluated during three phases. A planning phase, an interim evaluation phase and a final evaluation. In the planning phase agreements were made on the deliverables and activities to be undertaken. The interim evaluation phase, serves to evaluate the current state of affairs and if necessary, adjust agreements. During the final evaluation phase the Secretary-General assesses the results. The functioning of the Secretary-General is evaluated on the basis of article 8 of the Rules of order of the Social Economic Council. The evaluation is done by the Council. During the discussion, the Secretary-General can be requested to leave the meeting.

3.3 Training Sessions and Courses

In order to better assist the Council in its advice and consultation activities and for the further development of the staff of the secretariat, in 2015 the SER continued with its training program. During the course of the year, the SER worked closely with a number of organizations.

- In June one policy advisor attended a course titled ‘Macro-economic policies, employment and inclusive growth’ in the Netherlands at the International Training Center of the International Labour Office (ITC-ILO).

- In July the Secretary-General and one policy advisor attended a training provided by the ‘Rijksacademie voor Financiën, Economie en Bedrijfsvoering’ in the Netherlands. The training dealt with clear thinking on socio-economic security.

- In September one policy advisor attended a training “effective influence” provided by the ‘Academie voor Wetgeving’ in the Netherlands.
4.1 Budget 2015

The Social Economic Council specifies its budget annually. After approval by the Council, the budget is subsequently submitted to the Minister of General Affairs and the Minister of Finance.

The budget of the Social Economic Council is part of the annual budget of country Sint Maarten. In accordance with article 23, paragraph 2 of the National Ordinance of the Social Economic Council the Chairperson is responsible for financial management.

The Government has allocated a budget of ANG 1,477,676 for the year 2015 to the Social Economic Council.

<table>
<thead>
<tr>
<th>Budget Post</th>
<th>Budget 2015</th>
<th>Actual Expenditures</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel expenditures</td>
<td>ANG 850,976</td>
<td>ANG 784,208</td>
<td>ANG 66,768</td>
</tr>
<tr>
<td>Material costs goods and services</td>
<td>ANG 626,000</td>
<td>ANG 613,200</td>
<td>ANG 13,500</td>
</tr>
<tr>
<td>Total costs</td>
<td>ANG 1,477,676</td>
<td>ANG 1,397,408</td>
<td>ANG 80,268</td>
</tr>
</tbody>
</table>

4.2 Budget Realization

This paragraph contains a representation of the costs based on the SER 2015 budget.

There is a difference ANG 66,768 in personnel expenditures (legal advisor) due to the vacancy as of July 2015. The material costs were less that initially budgeted. The difference is ascribed to the reduced spending of the budget post Travel (in Dutch “Reis-en verblijfskosten”) and the budget post staff of third parties (in Dutch “personeel van derden”). The SER stayed within the budgeted amount of ANG 1,477,676.

The actual expenditures and differences are provided by the Finance Department. During the compilation of the annual report 2015, the amounts could not be verified as government’s 2015 financial statement is not yet available.
5.1 Information Village

In October, the SER took part in the “Information Village”. The event was organized by the High Councils of State of Sint Maarten (Council of Advice, General Audit Chamber and Ombudsman) in celebration of Constitution Day.

The purpose of the event was to increase awareness and understanding of good governance and propriety. The Festival Village was transformed into an “Information Village” where besides the High Councils of State, individual ministries and advisory bodies, received the public at their individual booths. Besides the general public various high schools were also invited. The students had the opportunity to learn and inquire more about our government apparatus.

5.2 SER-USM

In November the SER in collaboration with the University of St. Martin (USM) held a lecture with the theme “Education as an Emancipation tool in a Hospitality based island”. The SER-USM lecture, was organized on the eve of the St. Maarten day celebration.

The keynote speaker for the lecture was, Dr. Brian Meeks. Dr. Meeks is the Professor and Chair of Africana Studies at Brown University, Rhode Island; Professor of Social and Political Change and Director of the Sir Arthur Lewis Institute for Social and Economic Studies (SALISES); Director of the “Centre for Caribbean Thought in the Department of Government” at the University of the West Indies, Jamaica.
Throughout the year under review the SER maintained in contact with parliament, government and various institutions. In 2015 the SER strengthen its ties with Social Economic Councils from other countries. In the paragraph below you will find summaries of our meetings and short reports of the three work visits in 2015. For the complete reports, please visit our website [www.sersxm.org](http://www.sersxm.org)

6.1 Parliament and Government of Sint Maarten

In March the Chairwoman and Secretary-General provided a delegation of members of the Youth Parliament of Sint Maarten with a presentation on the advisory body. The Chairwoman gave an outline of the workings of the advisory body mainly on the role of its members and staff. In addition, information was provided with regards to when an advice was considered a SER topic. The Secretary-General outlined the role of the SER within the community and gave various examples of past and present topics that were covered by the SER.

On April 21st the SER was invited to appear before parliament. The Central Committee meeting with parliament was the first meeting between SER and Parliament. The delegation of the SER provided the members of parliament with a presentation on the SER’s composition, work method and its role in society.

In May, the SER appeared before the Council of Ministers (COM). The Secretary-General provided the COM with a presentation on the SER. In addition, the SER made use of the opportunity to the present the Prime Minister with its advice titled “Boost Sint Maarten”.

Chapter 6: Contacts
6.2 SER Curacao

On July 10th SER Curacao hosted a board meeting with SER Sint Maarten. The meeting between SER Curacao and SER Sint Maarten is the first official meeting between the chairpersons, since the establishment of SER Sint Maarten in May 2011. The SER Curacao is currently housed with the advisory bodies; Organized Consultation in the Civil Service\(^2\) and Council Education and Labour Market\(^3\); together the three institutions have a joint secretariat, with one Secretary-General who oversees the day to day management. At present the staff assigned to the SER Curacao, consists of five persons.

6.3 SER Aruba

On July 14th the Chairwoman and Secretary-General of SER Sint Maarten visited their colleagues on Aruba. The Sint Maarten delegation made use of the opportunity to strengthen the ties with the SER Aruba, while making arrangements for future cooperation and exchange of best practices. The Aruban SER was launched the second year after the island’s status aparte in 1986, and has played a pivotal role in ensuring social harmony and balanced economic growth.

6.4 AICESIS Russia

From September 16\(^{th}\) – 18\(^{th}\) 2015, the Social Economic Council (SER) took part in the board meeting of the international board of International Association of Economic and Social Councils and Similar Institutions (AICESIS) which were held in Moscow, Russia. The Sint Maarten delegation consisted of SER Chairwoman and a policy advisor. AICESIS is a worldwide organization representing over 70 member states from four different continents. AICESIS functions as an important international organization for social and economic policy. Sint Maarten, Curacao and Brazil together represented the region of Latin America and the Caribbean on the international board for the tenure 2013 - 2015.

\(^2\) GOA: Georganiseerd Overleg in Ambtenarenzaken
\(^3\) ROA: Raad onderwijs en Arbeidsmarkt
6.5 SER Netherlands

From October 29th - 30th 2015, the SER Sint Maarten took part in an International Joint Conference entitled: “Promoting Workplace Compliance, including in Global Supply Chains: the role of Social Economic Councils and similar social dialogue institutions”.

The conference was a collaboration between the Social Economic Council of the Netherlands, International Association of Economic and Social Councils and Similar Institutions (AICESIS) and the International Labor Organization (ILO) and. During the two days over 120 participants from 39 countries came together in The Hague.
7.1. Advice issued during the course of the year

In the year under review, two advices were sent to the SER by the government for advice.

The first advice request of April 9th, 2015 concerns the National decree, containing general measures, regarding the price indexation National Ordinance Accident Insurance and National Sickness Insurance Ordinance 2015 and reached the SER through the Ministry of Public Health, Social Development and Labor.

The second advice request of October 9th, 2015 concerns the National decree, containing general measures, regarding the expansion of General Insurance Special Medical Costs care and elderly care from the Ministry of Public Health, Social Development and Labor.

Both advices are included as annexes to this report.

The unsolicited advice: the unsolicited advices on Turn over Tax and Boost Sint Maarten are available via the SER website www.sersxm.org
7.2 National decree, regarding the price indexation National Ordinance Accident Insurance and National Health Insurance Ordinance 2015.

To the Minister of Public Health, Social Development and Labor
Mr. Rafael Boasman
Clem Labega Square
Philipsburg
Sint Maarten
Philipsburg, November 5th, 2015
AMENDED LETTER OF ADVICE

Our reference: SER/15/DCTB/077

Re: Amendment to the Letter of advice concerning the national decree, containing general measures, regarding the price indexation OV and ZV 2015.

Honorable Minister Boasman,

On April 9th, 2015 the SER received an advice request concerning the draft national decree, containing general measures, regarding the price indexation National Ordinance Accident Insurance ("Ongevallen verzekering" [OV]) and National Health Insurance Ordinance ("Ziekteverzekering" [ZV]) 2015

(in Dutch: “Landsbesluit, houdende algemene maatregelen, van de tot aanpassing van de dagloongrenzen voor 2015, genoemd in de Landsverordening ongevallenverzekering en de Landsverordening ziekteverzekering in verband met de ontwikkeling van de prijsindexcijfers van de gezinsconsumptie”)

The Social Economic Council (SER) evaluated the social, economic and legal consequences of the advice request and informed the then Ad Interim Minister of Public Health, Social Development and Labor, Mrs. Bourne-Gumbs, of its conclusions.

However, after the advice was made public according to the law, the (policy department of the) Ministry of Public Health, Social Development and Labor provided the SER with crucial, additional information which was reason for the SER to amend its first advice dated July 2nd, 2015, as follows:

Background OV and ZV:

The National Ordinance Accident Insurance [OV] contains rules about the insurance of employees against occupational accidents. The National Health Insurance Ordinance [ZV] is a form of health coverage that insures the population against meeting the costs associated with ill health. Among others the OV and ZV regulate the right of the employee to medical treatment and nursing care, financial allowances for occupational disability, the premiums that have to be paid and other responsibilities of the employer and the employee. Every year adjustments are made to the wage limit, based on the increase of the consumer price index (CPI) of August of the preceding year, which is being compared with the CPI of the year prior to the preceding year.

1. Article 8, paragraph 3 of the OV and article 1b ZV
According to the calculations of the Department of Statistics, the cost of living in August of 2014 increased by 2.2 per cent compared to August 2013. The wage limit for August 2014 was set at NAF 252, 94 for a 5-day working week and at NAF 210, 78 for a 6-day working week. This means that— including the 2.2 per cent increase—the wage limit for ZV and OV for 2015 will be set at NAF 258, 50 for a 5-day working week and at NAF. 215, 42 for a 6-day working week.

The OV/ZV wage limit proposal according to the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 is as follows:

<table>
<thead>
<tr>
<th>Work Week</th>
<th>2014</th>
<th>CPI Increase</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-day work week</td>
<td>NAF 252,94</td>
<td>increase</td>
<td>NAF 258,50</td>
</tr>
<tr>
<td>6-day work week</td>
<td>NAF 210,78</td>
<td>2.20%</td>
<td>NAF 215,42</td>
</tr>
</tbody>
</table>

**Executive Summary**

On April 9th, 2015 the Social Economic Council (SER) received a request to advise on the “Landsbesluit, houdende algemene maatregelen, van de tot aanpassing van de dagloongrenzen voor 2015, genoemd in de Landsverordening ongevallenverzekering en de Landsverordening ziekteverzekering in verband met de ontwikkeling van de prijsindexcijfers van de gezinsconsumptie” (in short: the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015).

However, while drafting its advice on this matter, the SER noticed an official publication in the Daily Herald of May 26th, 2015 under the Government Info Page, page 18, that the “Landsbesluit, houdende algemene maatregelen, van de 15de mei 2015, tot wijziging van het Gevarenkassenbesluit ongevallenverzekering in verband met de vaststelling van een premiepercentage voor de ongevallenverzekering en tot aanpassing van de daglonen, genoemd in de Landsverordening ongevallenverzekering en de Landsverordening ziekteverzekering in verband met de ontwikkeling van de prijsindexcijfers van de gezinsconsumptie” (in short: the published national decree, containing general measures, with regard to the hazardous work categories) became effective.

In light of the (published) national decree, containing general measures, with regard to the hazardous work categories becoming effective, the Social Economic Council (SER) evaluated the social, economic and legal consequences of the advice request and informed the then Ad Interim Minister of Public Health, Social Development and Labor, Mrs. Bourne-Gumbs, of its conclusions.

However, after the SER advice was made public according to the law, the (policy department of the) Ministry of Public Health, Social Development and Labor provided the SER with crucial, additional information which was reason for the SER to amend its first advice dated July 2nd, 2015. As a consequence, the SER observed that:

1. The SER was not included in the process to advise on the (published) national decree, containing general measures, with regard to the hazardous work categories.
2. There is a conflict with legislations; the two national decrees, containing general measures, as mentioned above are in conflict with each other.
3. There is a conflict in figures.
4. Executing a law before it is effective is a serious infringement on the rule of law and can lead to irreparable consequences which should not be borne by parties that have no influence on the matter.

[See attached elucidations for complete explanation summaries for each of these subjects]

Advice:

The SER regrets that it was not part of the advisory process with regard to the (published) national decree, containing general measures with regard to the hazardous work categories. Due diligence is lacking, which can result into irreparable consequences. The SER renders its advice in this case with reference to serious legal irregularities that should be resolved as soon as possible to avoid more social, economic and legal ramifications.

Therefore, pursuant to the SER meeting on this topic, the SER unanimously advises as follows:

1. That the SER is at the Minister’s disposal to offer its advice on all significant matters of a social economic nature.
2. That due diligence should always be carried out when drafting laws; i.e. the elucidation attached to the draft national decree, containing general measures OV and ZV 2015 should contain correct (financial) information.
3. That the (published) national decree, containing general measures with regard to the hazardous work categories does not reflect the actual premiums collected by SZV in 2015 and this breach should be solved as soon as possible.
4. That the National Ordinances OV and ZV were not amended correctly in 2010, when transitioning from Netherlands Antilles to country Sint Maarten. The process of changing these Ordinances (taking the latest national decree, containing general measures, from before 10-10-2010 into account) should start as soon as possible.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Oldine V. Bryson- Pantophlet
Chairwoman

Gerard M.C. Richardson
Secretary-General
Attached: Elucidation to this advice

ELUCIDATION

1. No advice from SER

The statutory task of the SER is to advise the government on all important matters of a social economic nature. The (published) national decree, containing general measures, with regard to the hazardous work categories did not reach the SER for advice, even though this is an important matter of social economic nature. This (published) national decree, containing general measures, with regard to the hazardous work categories retro-actively as per 2010 set the wage limit for 2015 at a different amount than the SER received in its advice request. The newly proposed wage limits for 2015 (being NAF 258.50 for a 5-day work week and NAF 215.42 for a 6-day work week) in the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 do not correspond with the amounts (being NAF 252.94 for a 5-day work week and NAF 210.78 for a 6-day work week) mentioned in the (published) national decree, containing general measures, with regard to the hazardous work categories. Whereas this (published) national decree, containing general measures, with regard to the hazardous work categories is legally applicable at this moment. This has social, economic and legal consequences that could have been avoided, had the SER been involved in this advisory process.

2. Legal Problem: Conflicting National decrees, containing general measures

According to the law, it is proposed in the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 that the wage limits OV/ZV for 2015 increases with 2.2% (since the CPI in 2014 increased 2.2% compared to the CPI in 2013). It is further proposed that the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 goes into effect retroactively as per January 1st, 2015.

According to the calculations of the Department of Statistics, the cost of living in August of 2014 increased by 2.2 per cent compared to August 2013. The wage limit for August 2014 was set at NAF 252.94 for a 5-day working week and at NAF 210.78 for a 6-day working week. This means that including the 2.2 per cent increase the wage limit for ZV and OV for 2015 will be set at NAF 258.50 for a 5-day working week and at NAF 215.42 for a 6-day working week.

The OV/ZV wage limit proposal according to the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 is explained below:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>CPI</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-day work week</td>
<td>NAF 252.94</td>
<td>increase</td>
<td>NAF 258.50</td>
</tr>
<tr>
<td>6-day work week</td>
<td>NAF 210.78</td>
<td>2.20%</td>
<td>NAF 215.42</td>
</tr>
</tbody>
</table>
However, while drafting its advice on this matter, the SER noticed an official publication in the Daily Herald of May 26th, 2015 under the Government Info Page, page 18, and in the National Gazette of June 12th, 2015 that the “Landsbesluit, houdende algemene maatregelen, van de 15de mei 2015, tot wijzaging van het Gevarenklassenbesluit ongevallenverzekering in verband met de vaststelling van een premiepercentage voor de ongevallenverzekering en tot aanpassing van de daglonen, genoemd in de Landsverordening ongevallenverzekering en de Landsverordening ziekteverzekering in verband met de ontwikkeling van de prijsindexcijfers van de gezinsconsumptie” (in short: the (published) national decree, containing general measures, with regard to the hazardous work categories) became effective.

This (published) national decree, containing general measures, with regard to hazardous work categories amends the National Ordinance OV as follows:

- In article 5, paragraph 11 and article 8, paragraph 4 of the OV NAF 176,90 is amended to NAF 210,78 and NAF 212,28 will be amended to NAF 252,94. (see article 2 under A of the (published) national decree, containing general measures, with regard to hazardous work categories)
- Article 2B makes exceptions for 10-10-10 until 31 December 2010
- Article 2D makes exceptions for the period 1 Jan.- 31 Dec. 2012

Thus,

<table>
<thead>
<tr>
<th>Year</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-day work week</td>
<td>NAF 197,10</td>
<td>NAF 227,94</td>
<td>NAF 235,23</td>
<td>NAF 246,29</td>
<td>NAF 252,94</td>
<td>NAF 252,94</td>
</tr>
<tr>
<td>6-day work week</td>
<td>NAF 164,25</td>
<td>NAF 189,95</td>
<td>NAF 196,03</td>
<td>NAF 205,24</td>
<td>NAF 210,78</td>
<td>NAF 210,78</td>
</tr>
</tbody>
</table>

These same amounts apply for the National Ordinance ZV.

Nowhere does the (published) national decree, containing general measures, with regard to hazardous work categories mention that this (published) national decree is only valid for 2010 until 2014. There is, for example, no end date indicated. This means that after all the exceptions, the amounts of NAF 252, 94 and NAF 210, 78 continue to be valid (after 2014), thus also for 2015. So, today (in 2015) the amounts legally applicable are NAF 252, 94 and NAF 210, 78. (Please bear in mind that the draft national decree, containing general measures, with regard to the indexation of ZV/ OV was not law at the time of drafting the advice and still to this day is not legally applicable).

The above-mentioned thus concerns the (published) national decree, containing general measures, where the SER was not asked to render its advice.

In addition, there was another national decree, containing general measures, where the SER was asked to render its advice on, which was the draft national decree, containing general measures regarding the price indexation OV and ZV 2015.
According to this draft national decree, containing general measures regarding the price indexation OV and ZV 2015, the proposed premiums are as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>CPI</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>5- day work week</td>
<td>NAF 252.94</td>
<td>increase</td>
<td>NAF 258.50</td>
</tr>
<tr>
<td>6- day work week</td>
<td>NAF 210.78</td>
<td>2.20%</td>
<td>NAF 215.42</td>
</tr>
</tbody>
</table>

The amounts of NAF 258, 50 and NAF 215, 42 have been collected by SZV as of January 1st, 2015. But the (published) national decree, containing general measures, with regard to hazardous work categories (which is thus legally applicable), has set the amounts at NAF 252, 94 and NAF 210, 78.

The SER would like to emphasize that this conflict has nothing to do with the date/year (2015) of publishing the national decree, containing general measures, with regard to hazardous work categories. The two national decrees simply conflict with each other, because the (published) national decree, containing general measures, with regard to hazardous work categories sets the wage limit for 2014 and onwards at NAF 252, 94 and NAF 210, 78, whereas, the draft national decree, containing general measures regarding the price indexation OV and ZV 2015 (not yet applicable law) sets the wage limit for January 2015 onwards at NAF 258, 50 and NAF 215, 42, and the amounts for 2015 have already been collected as of January 1st, 2015.

Arguments made about the lengthy legislative procedures before a national decree, containing general measures, becomes effective, are not justified. The (published) national decree, containing general measures, with regard to hazardous work categories determined that today the amounts should be NAF 252, 94 and NAF 210, 78. But in reality, today the amounts being collected are NAF 258, 50 and NAF 215, 42.

II) The wage limits mentioned in the (published) national decree, containing general measures, with regard to hazardous work categories do not correspond with the wage limits in the OV and ZV.

The National Ordinance OV (AB 2013, GT. No 801) is legally applicable per 10-10-2010.

The National Ordinance ZV (AB 2013, GT. No. 802) is legally applicable per 10-10-2010.

The amounts set in these ordinances are NAF 164, 25 and NAF 197, 10.

The additional articles of the Constitution of Sint Maarten states under Article 1 paragraph 1:

“De op het tijdstip van inwerkingtreding van deze Staatsregeling geldende Landsverordeningen, landsbesluiten, houdende algemene maatregelen en andere besluiten van regelgevende aard van de Nederlandse Antillen, alsmede eilandsverordeningen en eilandbesluiten, houdende algemene maatregelen, van het eiland gebied Sint Maarten blijven van kracht, totdat zij met inachtneming van de Staatsregeling zijn gewijzigd of ingetrokken”.
The National Ordinances OV and ZV were changed in 2010, so these Ordinances (AB 2013, GT. No 801 and AB 2013, GT. No. 802) are legally applicable.

Had these National Ordinances not been changed in 2010, then the Netherlands Antilles versions would still be valid, along with all national decrees, containing general measures, of 2009 as stated in Article 1, paragraph 1 (additional Articles of the Constitution of Sint Maarten). But now the National Ordinances were changed stating the amounts NAF 164, 25 and NAF 197, 10.

The Ministry of Public Health, Social Development and Labor mentions the national decrees of 2009 where the amounts were amended (NAF 176, 90 and NAF 212, 28). However, this means that there is conflict in 2 laws: The National Ordinance of 2010 and the national decree of 2009.

When there are conflicting laws, the following rules apply:
Lex specialis [“speciaal voor algemeen”]
Lex superior [“hogere wet voor lagere wet”]
Lex posterior [“jong voor oud”]
Thus, legally: the National Ordinances OV and ZV of 2010 apply.

Therefore, the SER stated that there is no legal basis to increase NAF 197, 10 to NAF 212, 28 and the amount of NAF 164, 25 to NAF 176, 90.

Thus, even though the already published national decree, containing general measures with regard to the hazardous work categories mentions different amounts for different years leading back to 2010, legally there is no basis for that, thus the amounts applicable should be the amounts mentioned in the National Ordinances OV and ZV (AB 2013, GT. No 801 and AB 2013, GT. No. 802): NAF 164, 25 and NAF 197, 10.

However, after this advice was made public, the SER received additional information from the Ministry of Public Health, Social Development and Labor where it is clear that there were valid national decrees, containing general measures, from the time of the Netherlands Antilles. (P.B. 2009, no 43 and P.B. 2009 no. 44) Therefore, the SER can now conclude that while transitioning into country status, the National Ordinances were not amended properly. The National Ordinances OV and ZV should have been amended, stipulating the most recent amounts from the national decree, containing general measures. The only reason why it is justified to change amounts in a National Ordinance via a national decree, containing general measures, is because (the process of changing a National Ordinance is a lengthy one and) in this case, it concerns systematically changing amounts. Whenever there is an opportunity for amending the relevant National Ordinance, this should be done, taking the most recent national decree, containing general measures, into account. However, this opportunity was missed in 2010 when the National Ordinances ZV and OV were amended.

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2 This information was received on September 9th, 2015.
3 See “Aanwijzingen 36 en 37 Regeling van de Minister-President van 27 juni 2013, houdende vaststelling van de Aanwijzing voor de regelgeving van Sint Maarten, AB 2013, No. 26
4 See “Aanwijzing 26 Regeling van de Minister-President van 27 juni 2013, houdende vaststelling van de Aanwijzing voor de regelgeving van Sint Maarten, AB 2013, No. 26
Even though the Ministry of Public Health, Social Development and Labor is not the institution responsible for the error in the National Ordinances OV and ZV, (the policy department of) this Ministry was aware that the National Ordinances OV and ZV mention incorrect amounts, yet this crucial information was not provided to the SER (at the time the SER was busy drafting the advice) nor was it mentioned in the elucidation to the national decree, containing general measures.

3. The national decrees, containing general measures are using conflicting figures disruptively

The (published) national decree, containing general measures, and the draft national decree, containing general measures, are using conflicting figures that become disruptive.

i) With the information now provided to the SER regarding the error made while transitioning to country status and not including the amounts of the latest national decree, containing general measures, it is correct that ZV collected the exact amounts it was supposed to collect legally, except for 2015. The (published) national decree, containing general measures, with regard to hazardous work categories sets the wage limit for 2014 and onwards at NAF 252, 94 and NAF 210, 78, whereas, the (draft) national decree, containing general measures, regarding the price indexation OV and ZV 2015 (not yet applicable law) sets the wage limit for January 2015 onwards at NAF 258, 50 and NAF 215, 42.

The (published) national decree, containing general measures, with regard to hazardous work categories determined that today the amounts should be NAF 252, 94 and NAF 210,78. But in reality, today the amounts being collected are NAF 258, 50 and NAF 215, 42.

<table>
<thead>
<tr>
<th>5-day work week</th>
<th>6-day work week</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAF 258,50</td>
<td>NAF 215,42</td>
</tr>
<tr>
<td>NAF 252,94</td>
<td>NAF 210,78</td>
</tr>
</tbody>
</table>

This is still a conflict in figures.

ii) The information under “Financiële paragraaf” in the Elucidation to the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 is not correct. According to the elucidation on the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015, with this proposed increase of the wage limit, it is expected that 75 extra (main) insured persons will fall under the scope of the OV, and that the increase will have a positive effect on the fund. Regarding the ZV increase, a similar result has been predicted. The SER comments that this statement is not true for the OV, since the ability of being insured under the OV has nothing to do with (increasing) the wage limit. Unlike the ZV, it does not matter for the OV whether someone earns more or less than the wage limit. In order to be insured for ZV, one’s income must not exceed the wage limit. For the OV, however, the wage limit is not a determining factor.
The third paragraph under “Financiële paragraaf” states:

“Met onderhavige verhoging van de loongrenzen komen 75 extra hoofdverzekeren onder de werking van de Landsverordening ziekteverzekering. Hun gezamenlijk inkomen bedraagt op basis van de gegevens waarover SZV beschikt NAF 4,97 miljoen. Hiermee komt de werkgevers en werknemersbijdrage die extra wordt geïnd uit op NAF 621.000,-... De conclusie is dan ook dat op basis van deze inschattingen de verhoging van de loongrens een positieve uitwerking heeft voor het Ziekenfonds. Een vergelijkbaar gevolg is te zien in het kader van de Landsverordening Ongevallenverzekering”.

See article 8, paragraph 4 National Ordinance OV:

“wanneer het dagloon van de werknemer voor wie een 6-daagse werkweek geldt meer dan NAF 164, 25 en van de werknemer voor wie een 5-daagse werkweek geldt meer dan NAF 197, 10 bedraagt, is over het meerdere geen premie verschuldigd”.

This means that the ability to be insured under the OV has nothing to do with (increasing) the wage limit. Unlike the ZV, it does not matter for the OV whether someone earns more or less than the wage limit. In order to be insured for ZV, one’s income must not exceed the wage limit. In order to be insured for OV, the wage limit is not a determining factor.

For this reason, the SER stated that the information under “Financiële paragraaf” in the Elucidation to the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 is indeed not correct. The SER would like to comment that it is peculiar that the Ministry now states that it does not share the SER’s view on this matter. When the SER did call the Policy Department of the Ministry of Public Health, Social Development and Labor via telephone during the time of drafting this advice, the Policy Department admitted that this information under “Financiële paragraaf” in the Elucidation to the draft national decree, containing general measures, regarding the price indexation OV and ZV 2015 was erroneous.

Furthermore, the SER would like to point out that the information in an Elucidation [“Nota van Toelichting”] to any law should always be true and correct and should never be taken lightly.
7.3 National decree, regarding the expansion of General Insurance Special Medical Costs care and elderly care.

To the Minister of Public Health, Social Development and Labor
Mr. Emil Lee
Clem Labega Square
Philipsburg
Sint Maarten

Philipsburg, December 7th, 2015

LETTER OF ADVICE

Our reference: SER/15/OCB/091

Re: Letter of advice concerning the draft national decree, containing general measures, regarding the expansion of AVBZ care - elderly care (in Dutch: "Concept Landsbesluit uitbreiding AVBZ- zorg ouderenzorg")

Honorable Minister Lee,

In reply to a request of your predecessor, the Ad Interim Minister of Public Health, Social Development and Labor, Mrs. Rita Bourne-Gumbs, an advice request was received by our Council on October 9th, 2015, concerning the national decree, containing general measures, regarding the expansion of AVBZ care - elderly care (in Dutch: “Concept Landsbesluit uitbreiding AVBZ- zorg ouderenzorg”)

The Social Economic Council (SER) has evaluated the social, economic and legal consequences of the advice request and came to the following conclusions:

1. To reject the draft national decree, containing general measures, regarding expanding AVBZ care - elderly care, in its current form.
2. That due diligence should always be carried out when drafting laws; i.e. the elucidation attached to the proposed national decree, containing general measures, regarding expanding AVBZ care - elderly care should contain correct and sufficient information.
3. That the Ministry of Public Health, Social Development and Labor should only forward the draft, national decree, containing general measures, regarding expanding AVBZ care - elderly care to other (advisory) institutions within our Government system, after the draft national decree, containing general measures, and associated elucidation have been amended as advised by the SER.

Background on the national decree, containing general measures, regarding the expansion of AVBZ care - elderly:

According to the draft national decree, containing general measures, regarding the expansion of the AVBZ care - elderly care the White and Yellow Cross was being subsidized by the Government of Sint Maarten to provide care for the elderly. The subsidy consisted of 21 spaces for residential elderly care.
The White and Yellow Cross defines “elderly care” as care for the elderly who are no longer able to provide for themselves, due to various, most often social economic reasons. Those elderly persons are not (necessarily) sick. See the definition Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010-2013:\footnote{Information received on November 18th, 2015 by the Ministry of Public Health, Social Development and Labor.}

Care product: residential elderly care
Eligible: Residents of Sint Maarten who are 60 years and older and in need of residential care with an ADL score of 6 or higher. The indication for admission into a Residential Elderly Care facility is not primarily based on their needs for nursing care, but on their inability to sustain an independent life in the community. This means that their primary need is usually not nursing care but support in daily life activities (emphasis added).

The Government of Sint Maarten indicated that it can no longer subsidize above mentioned care, thus the Ministry of Public Health, Social Development and Labor proposed the idea to have the elderly care set up under the National Ordinance AVBZ, in order to reach out to this vulnerable group.

The SER would like to emphasize that it is in favor of adjusting the law to accommodate those in need of (residential) care. However, the SER remarks that such adjustments should be done properly by defining the relevant group(s) accordingly and providing correct and sufficient information.

**Executive Summary**

On October 9th, 2015 the Social Economic Council hereafter the “SER” received an advice request from the Ministry of Public Health, Social Development and Labor, concerning the draft national decree, containing general measures, regarding the expansion of AVBZ care- elderly care (in Dutch: “Ontwerp Landsbesluit uitbreiding AVBZ- zorgouderenzorg”)

On Tuesday, October 20th, 2015, the SER sent its preliminary concerns/ comments on the draft national decree to the policy department of the Ministry of Public Health, Social Development and Labor. The SER received a reaction from the relevant Ministry on Wednesday, November 18th, 2015. With this information the SER drafted its advice.

As a consequence, the SER observed that:

1. The draft national decree, containing general measures, regarding expanding AVBZ care- elderly care as currently drafted, serves another purpose than what was intended, because the draft national decree, containing general measures, was proposed to have the elderly care as provided by the White and Yellow Cross, set up under the National Ordinance AVBZ, in order to reach out to this vulnerable group (the elderly and poor people). But in the draft national decree, containing general measures, the aim is to reach out to another group: the old and sick people.
2. The Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care- elderly care does not contain correct (and sufficient) information;
3. The SER did not receive all requested information;
[See the attached elucidation for a complete explanation on each of the above-mentioned points.]

Advice:

When studying all information received from the Ministry of Public Health, Social Development and Labor, with regard to the advice request draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, the SER observed that due diligence is lacking.

In order to adopt a national decree, containing general measures (or any other law), it is important that the elucidation to that law explains the reasons for drafting such a law and the context of how this law will be implemented.

The drafter(s) of the law, in this case the Ministry of Public Health, Social Development and Labor, has (have) an obligation to disclose all relevant, essential and correct information relating to this law in order to avoid legal, factual, social and economic complications/ consequences.

Therefore, pursuant to the SER meeting on this topic, the SER unanimously advises as follows:

1. To reject the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, in its current form.
2. That due diligence should always be carried out when drafting laws; i.e. the elucidation attached to the proposed national decree, containing general measures, regarding expanding AVBZ care-elderly care should contain relevant, correct and sufficient information.
3. That the Ministry of Public Health, Social Development and Labor should only forward this draft national decree, containing general measures, regarding expanding AVBZ care-elderly care to other (advisory) institutions within our Government system, after the draft national decree, containing general measures and associated elucidation has been amended as advised by the SER.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Olding Y. Bryson-Pantophlet
Chairwoman

Gerard M.C. Richardson
Secretary-General

Cc: The Minister of General Affairs, the Honorable Prime Minister William Marlin.
Attached: Elucidation to this advice

ELUCIDATION

1. The draft national decree, containing general measures, regarding expanding AVBZ care- elderly care as currently drafted, serves another purpose than what was intended.

With the Government’s subsidy, the White and Yellow Cross was accommodating 21 senior citizens whom (usually due to social/economic reasons) could no longer rent a home or an apartment for themselves (for example: those who only receive an AOV allowance which is not enough). Basically, with government’s subsidy, the White and Yellow Cross was accommodating senior citizens who are poor.

Since the Government indicated that it can no longer provide this subsidy, the Ministry of Public Health, Social Development and Labor proposed to reach out to those old, poor people who would otherwise be left destitute, but with this national decree, containing general measures, the Ministry expands the right to care to a much larger group (excluding the elderly and poor people), with all accompanying (financial) consequences.

Thus, with the draft national decree, containing general measures, the Ministry of Public Health, Social Development and Labor now wants to accommodate old and sick people and expand the AVBZ accordingly, which will still leave the initial group that was covered by the Government’s subsidy destitute.

See Article 1 draft national decree, containing general measures, regarding expanding AVBZ care- elderly care (in Dutch):

1. Verzekeren als bedoeld in artikel 4 van de Landsverordening algemene verzekering bijzondere ziektekosten hebben aanspraak op verblijf in een instelling voor ouderen met samenhangende zorg bestaande uit verzorging en begeleiding, indien de verzekerde de pensioengerechtigde leeftijd heeft bereikt en is aangewezen op een beschermende woonomgeving.

2. Onder verzorging als bedoeld in het eerste lid wordt verstaan: het ondersteunen bij of het overnemen van activiteiten op het gebied van de persoonlijke verzorging in verband met een somatische of psychogeriatrische aandoening of beperking, gericht op het opheffen van een tekort aan zelfredzaamheid.

3. Onder begeleiding als bedoeld in het eerste lid wordt verstaan: het aanbieden van activiteiten aan verzekerden met een somatische of psychogeriatrische aandoening of beperking die matige of ernstige beperkingen hebben op het terrein van de sociale redzaamheid, het bewegen en verplaatsen, het psychisch functioneren of het geheugen en de oriëntatie, welke activiteiten gericht zijn op bevordering, behoud of compensatie van de zelfredzaamheid.
(Empasis added).

The content of this article is contrary to the definition used in the Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010-2013:

Care product: residential elderly care

Eligible: Residents of Sint Maarten who are 60 years and older and in need of residential care with an ADL score of 6 or higher. The indication for admission into a Residential Elderly Care facility is not primarily based on their needs for nursing care, but on their inability to sustain an independent life in the community. This means that their primary need is usually not nursing care but support in daily life activities (Emphasis added).

By expanding the AVBZ care in the above described manner, the Ministry reaches out to an entire new group of persons, instead of taking in the elderly and poor people (the group that the White and Yellow Cross was accommodating with the subsidized funds from the Government). If this is indeed the intention of the Ministry, this should be communicated clearly in the elucidation. As it is worded at the moment, the draft national decree, containing general measures, serves another purpose than that what was intended (according to the Elucidation), thus not covering the original group in need of (residential) care.

Furthermore, the draft national decree, containing general measures, only makes a distinction between [Bejaardenhuis met een verzorgingshuisfunctie] and [verzorgingshuis voor ouderen]. But these concepts are not properly explained.

Article 2

A

h. bejaardenhuiszorg met een verzorgingshuisfunctie: zijnde een verzorgingshuis voor bejaarden, waar aan de bewoners verzorging en begeleiding wordt aangeboden in een beschermende woonomgeving.

B

f. verzorgingshuiszorg voor ouderen: de zorg die een bejaardenhuis biedt aan personen boven de pensioengerechtigde leeftijd die zijn aangewezen op een beschermende woonomgeving. De omvang van de zorg betreft het totaal aan zorg wat het bejaardenhuis op dit gebied kan geven, hetgeen nader is omschreven in het zorgcontract dat het Uitvoeringsorgaan met de bejaardenhuizen afsluit. De duur van deze zorg gaat in vanaf de eerste dag van opname en is verder onbeperkt, maar staat onder toezicht van het Uitvoeringsorgaan.

It is not clear what the difference is between [Bejaardenhuis met een verzorgingshuisfunctie] and [verzorgingshuis voor ouderen], when it is not defined who is a [bejaarde] and who qualifies to be an [ouderen], therefore it is difficult to translate these notions/concepts into English, because there is no
proper explanation given in the draft national decree, containing general measures\(^2\) and it is not up to the SER to define those concepts.

Additionally, the Ministry of Public Health, Social Development and Labor made the following statements\(^3\):

- The elderly who are sick, are in need of nursing care. This group is eligible for [verpleeghuiszorg].
  
  [Verpleeghuiszorg] is not the same as [Verzorgingshuiszorg].

Please note that the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care does not mention [Verpleeghuiszorg].

First of all, the group that falls under the scope of article 1 of the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care are people who are old and sick. But the Ministry stated that these people are not eligible to fall under the [Verzorgingshuiszorg]. As a consequence thereof, old and sick people should not fall under the scope of the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, but under the scope of the [Verpleeghuiszorg] (which is not covered by the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care).

The other statement made by the Ministry of Public Health, Social Development and Labor is that the Ministry does not see any big difference between the definition of [bejaardenhuiszorg]\(^4\) the group that is insured under the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care and the descriptions in the subsidy decree and the definition given in the Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010-2013.

Since there are major differences in above-mentioned definitions, the SER considers this statement incorrect.

2. The Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care does not contain correct and sufficient information.

1) The White and Yellow Cross was informed on April 9\(^{th}\), 2015 that Government’s subsidy to this institution will discontinue as per May 1\(^{st}\), 2015, while the Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care

\(^2\) There is, for example, no explanation given for "bejaarde", nor for "oudere". "Bejaarde" according to the online Dutch Van Dale dictionary is someone who reached the age of 65 or older whereas, "oudere" is explained by the Van Dale dictionary as someone who is approximately 55 years and older. The draft national decree, containing general measures, however, explains "oudere" as someone who has reached the pensionable age. Thus what is the difference between "bejaarde" and "oudere" according to the draft national decree, containing general measures?

\(^3\) Statements made in the Working paper for the SER dated, October 26\(^{th}\), 2015 from the Department Public Health of the Ministry of Public Health, Social Development and Labor.

\(^4\) This concept is nowhere to be found in the draft national decree, containing general measures regarding expanding AVBZ care-elderly care.
states that the subsidy ended per January 1st, 2015. So, in reality, the first four months of the year 2015 were still covered from Government’s budget, but the draft national decree, containing general measures, regarding expanding AVBZ care- elderly care is drafted with the impression that the AFBZ fund will have to cover the costs as per January 2015.

The Ministry of Public Health, Social Development and Labor informed the SER that the draft national decree, containing general measures, regarding expanding AVBZ care- elderly care (and the associated Elucidation) was (were) drafted before January 1st, 2015. The Ministry furthermore confirmed that for the first four months of the year 2015, the White and Yellow Cross did indeed still receive subsidy from the Government. But when the national decree, containing general measures, regarding expanding AVBZ care- elderly care goes into effect, the first four months of 2015 will not be paid out (for a second time) from the AFBZ fund (the General Fund for exceptional medical cost (In Dutch: Algemene Fonds Bijzondere Ziektekosten AFBZ), according to the Ministry of Public Health, Social Development and Labor.

However, the SER cannot agree with above statements made by the Ministry. When the advice request was signed off on October 6th, 2015 by the then Minister of Public Health, Social Development and Labor the necessary due diligence should have been carried out. There should have been another check if all information is still relevant before sending it to an advisory body for advice. Information in the elucidation to a national decree, containing general measures, that is not or no longer based on the correct information/ circumstances can and should be changed up until the moment the national decree is adopted.

Furthermore, the draft national decree, containing general measures, regarding expanding AVBZ care- elderly care with associated elucidation in its current form, does not elaborate on the first four months of 2015 where the subsidy was paid from Government’s budget. Thus, if these first four months of 2015 will be paid out a second time, (this time from the AFBZ fund), it will be difficult to discover that a financial error was made, without having the crucial background information on Government’s continued subsidy up until April 2015.

As of January 1st, 2014 the subsidy from the Government to the White and Yellow Cross consists of 21 spaces (before January 1st, 2014 the subsidy consisted of 26 spaces). The White and Yellow Cross has a continuous waiting list of 12-16 persons.

The draft national decree, containing general measures, (see article 1 paragraph 1 of the draft national decree, containing general measures) mentions that ALL old people (who are insured and apply to the other conditions) can claim a place in an elderly/retirement home. But the SER asked the Ministry whether there is space for ALL old people who claim such a space in an elderly home, since the White and Yellow Cross only accommodated 21 elderly.

The Ministry did not provide the SER with a proper answer to this question. The Ministry informed the SER that the White and Yellow Cross has plans to expand its facility. The SER is

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5 See “Aanwijzing 158 jo. 165 (met toelichting) Regeling van de Minister- President van 27 juni 2013, houdende de vaststelling van de Aanwijzing voor de regelgeving van Slot Maarten, AB 2013, GT. No 26”.
aware of this, because the SER contacted the White and Yellow Cross, who notified the SER that the expansion of its facility will start by the end of 2016 and will comprise 30-40 additional spaces.

Therefore, the SER is still wondering whether there is space for ALL old people who claim such a space in an elderly home, according to article 1 paragraph 1 of the draft national decree, containing general measures, regarding expanding AVBZ care: elderly care.

It is proposed to have the elderly care financed via AFBZ fund. The AFBZ fund was chosen for obvious reasons (“voor de hand liggend”) according to the Ministry of Public Health, Social Development and Labor and financing elderly care from this fund will not affect the (AFBZ) fund. The SER is of the opinion that the fund will surely be affected financially. (If one plans to finance a new kind of care via the fund, the fund will automatically be affected). Whether the costs will not negatively affect the AFBZ fund, could not be determined by the SER with the information provided in the Elucidation.

The Elucidation states:

1. Financiering vanuit het Algemeen Fonds Bijzondere Ziektekosten is voor de hand liggend. Niet alleen is dit fonds financieel gezond en zou financiering van genoemde zorgverlening geen onevenredige belasting voor het fonds zijn. (See page 4 Elucidation [Nota van Toelichting])

2. …maar tevens wordt de financiële positie van het Algemeen Fonds Bijzondere Ziektekosten (AFBZ) niet aangetast. (see page 5 Elucidation [Nota van Toelichting])

3. …terwijl de kosten die gepaard gaan met deze zorgverlening niet langer ten laste komen van de landsbegroting. (see page 5 under “Financiële paragraaf” of the Elucidation [Nota van Toelichting])

4. Op basis van bovenstaande cijfers wordt inzichtelijk dat de financiële positie van het fonds niet wordt aangetast met de uitbreiding van het pakket. (see last paragraph under “financiële paragraaf” of the Elucidation [Nota van toelichting]).

With regard to the third statement above, the SER remarks that the Government of Sint Maarten contributes to the AFBZ fund on a yearly basis. Therefore, it cannot be stated that the country’s budget will not be affected. 6

The SER did receive the SZV financial year report 2014 from the Ministry of Public Health, Social Development and Labor, but the SER notes that the figures stated under the financial paragraph in the elucidation do not correspond with the financial information of the AFBZ fund as reflected in the SZV year report 2014. 7

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6 Even though the country’s contribution stopped temporarily for a period of two years (AB 2014, no. 4).
7 Information in the Elucidation states: “Baten NAF 22.655.000”; information SZV year report 2014 states other figures.
In the Elucidation to the draft national decree, containing general measures, the Ministry stated several reasons why the SER was not going to be part of this advisory process. The SER emphasizes that this is not a choice for the Ministry. The law is clear: article 5 paragraph 1 under r: in this case, the National Ordinance AVBZ can only be expanded after the SER has been consulted. The SER remarks that the information of not including the SER in the advisory process in this case, should never have been included in the Elucidation to the draft national decree, containing general measures.

See page 5 Elucidation [Nota van Toelichting] under “Artikelsgewijs deel”, last sentence:

“Op basis van artikel 5, tweede lid, is de inhoud en omvang van de zorg geregeld in het landsbesluit zorg, onder meer door te bepalen dat de zorg onder beperkingen wordt verleend en onder de voorwaarde dat degene die de zorg geniet, bijdraagt in de kosten daarvan”.

De SER noticed that those who are eligible for the care CAN be requested to contribute to the related costs. See article 5 paragraph 2 National Ordinance AVBZ. The contribution is not an obligation as it is being stated in the Elucidation. This is essential financial information that should be corrected in the Elucidation.

3. The SER did not receive all requested information

Article 19 of the National Ordinance AVBZ states that the Minister of Public Health, Social Development and Labor should give an annual instruction about the different groups/care that fall under the AVBZ and how the budget will be divided between the different groups of sick people that fall under the scope of the AVBZ. The SER requested to see the instruction for the year 2015 to determine whether the intended elderly care was previously calculated/ included.

The Ministry informed the SER that this (requested) information is not available at this moment. The SER finds this very unfortunate, since this information is essential financial information in this case.
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>SER</td>
<td>Social Economic Council</td>
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<tr>
<td>COCI</td>
<td>Chamber of Commerce &amp; Industry</td>
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<tr>
<td>WICSU/PSU</td>
<td>Windward Islands Civil Servants Union/Private Sector</td>
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<tr>
<td>SHTA</td>
<td>Sint Maarten Hospitality and Trade Association</td>
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<td>UFA</td>
<td>United Federation of Windward Antilles</td>
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<td>WIFOL</td>
<td>Windward Islands Federation of Labour</td>
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<td>Drs</td>
<td>Doctorandus</td>
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<tr>
<td>Ir</td>
<td>Ingenieur/Engineer</td>
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<tr>
<td>MSc</td>
<td>Master of Science</td>
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<tr>
<td>LL.M.</td>
<td>Master of Laws</td>
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<tr>
<td>USM</td>
<td>University of St. Martin</td>
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<tr>
<td>AICESIS</td>
<td>The International Association of Economic and Social Councils and Similar Institutions</td>
</tr>
<tr>
<td>CESALC</td>
<td>Economic and Social Councils Network for Latin America and the Caribbean</td>
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