



Sociaal Economische Raad
Social Economic Council

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LETTER OF ADVICE

The Honorable Minister of Education, Culture, Youth & Sports Affairs/ Prime Minister,
Acting Minister of General Affairs, Mr. Wycliffe S. Smith
The Honorable Minister of Public Housing, Environment, Spatial Development and Infrastructure /
Acting Minister of Public Health, Social Development and Labor, Mr. Chris Wever

Government Administration Building
Soulaliga Road no. 1
Philipsburg
Sint Maarten

Philipsburg, October 30th, 2019

Our reference: SER/19/CV/34

Re: Letter of advice concerning the draft national decrees on the Indexation of General Old Age Insurance for the years 2014 up to and including 2019 [In Dutch: de landsbesluiten Indexering Algemene Ouderdomsverzekering betreffende de jaren 2014 tot en met 2019] and the draft national decrees on the Indexation of Widow and Orphan Insurance for the years 2014 up to and including 2019 [In Dutch: de landsbesluiten Indexering Algemene Weduwen- en Wezenverzekering betreffende de jaren 2014 tot en met 2019].

Honorable Minister Smith,

As the caretaker Prime Minister¹ for the current Council of Ministers of St. Maarten, the Social Economic Council (SER) hereby kindly requests you in your current capacity to review the following advice. For continuity purposes, please ensure that the Council of Ministers of the incoming government receives this advice for follow-up.

On September 12th, 2019², SER received the solicited advice request from the Ministries of General Affairs and of Public Health, Social Development, and Labor concerning the draft national decrees regarding the indexation of general old age insurance for the years 2014 up to and including 2019 (hereafter: the draft AOV decrees) and the draft national decrees regarding the indexation of widow and orphan insurance (hereafter: the draft AWW decrees). As the draft AOV decrees and the draft AWW decrees were received by the Council together and both concern indexation, this advice will address both.

¹ Landsbesluit van 10 oktober 2019 no. LB-19/0735; Landsbesluit van 10 oktober no. LB-19/0736; Landsbesluit van 10 oktober no. LB-19/0737, published in the National Gazette-Special Edition of the October 15th, 2019.

² The advice request is dated September 10th, 2019.



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The draft AOV and draft AWW decrees were discussed in the board meeting of Thursday, October 17th, 2019. The SER has evaluated the social, economic and legal consequences of the advice request and came to the following conclusions:

Background AOV and AWW:

The National Ordinance regulating General Old Age Insurance [In Dutch: Landsverordening regelende een algemene, de gehele bevolking omvattende, verplichte verzekering tegen geldelijke gevolgen van ouderdom] (hereafter: AOV) contains regulations regarding old age pension for residents of St. Maarten.³ Within its regulations, the AOV includes the defining of the insured group, the right of individuals to old age pension including the amount, the maximum pension payment for an old-age pensioner who is married, and the premium income limits of the general contribution made to the AOV fund by the employed.

The National Ordinance regulating General Widow and Orphan Insurance [In Dutch: Landsverordening regelende een algemene, de gehele bevolking omvattende, verplichte weduwen- en wezenverzekering] (hereafter: AWW) contains regulations regarding widow and orphan pension. The AWW within its legislation includes the defining of the insured group, the rights of widows and orphans to a pension including the amount, and the premium income limit of the general contribution made by the employed.

Both the AOV and AWW outline the implementing body as the 'bank'⁴, which, as outlined by the National Ordinance Social and Health Insurance [In Dutch: Landsverordening Uitvoeringsorgaan Sociale en Ziektekosten Verzekeringen], is the Social and Health Insurances⁵ (hereafter the Dutch abbreviation: SZV).

Under both ordinances, the general old age pension amount and the widow's pension amount are to be adjusted yearly by national decree based on the Consumer Price Index (CPI) of August of the preceding year with August of the year before that.⁶ (For example, for the legislation regarding 2014, the change in CPI is reflected as the difference in CPI between August 2013 and August 2012.) In addition, the premium income limits are to be adjusted along with the adjustment of the pension amounts as a result of the change in CPI.⁷ The premium income limits refer to both the minimum and maximum premium income amounts which the rate of AOV and AWW premiums may be applied to. Furthermore, for

³ For specific regulations regarding the requirements to claim general old age pension refer to: Landsverordening regelende een algemene, de gehele bevolking omvattende, verplichte verzekering tegen geldelijke gevolgen van ouderdom AB 2018, GT no. 522, artikel 5.

⁴ AB 2013, GT no. 520, article 3, paragraph 1. AB 2018, GT no. 522, article 4, paragraph 1.

⁵ Landsverordening Uitvoeringsorgaan Sociale en Ziektekosten Verzekering AB 2013, GT no. 69, artikel 1.

⁶ AB 2018, GT no. 522, article 7, paragraphs 2 and 3, article 7a, paragraph 9, and Landsverordening regelende een algemene, de gehele bevolking omvattende, verplichte weduwen- en wezenverzekering AB 2013, GT no. 522, article 11, paragraphs 7 and 8.

⁷ AB 2018, GT no. 522, Article 26, paragraph 6. AB 2013, GT no. 522 article 29, paragraph 6.



individuals who are unemployed yet receive a taxable income, the ordinances regulate the income limits that may be levied for AOV and AWW contributions.

As the draft decrees concern the years 2014 up to and including 2019, the following sections will address the increase in pension amounts and premium limits based on the CPI for each of the six years for both sets of national decrees.

AOV Indexation:

The following section explains the changes in pension amounts and premium income limits in detail. An overview of the changes from 2014 up to and including 2019 is shown below in table 1.

2014:⁸

In August of 2013, CPI increased by 2.8% as compared to August of 2012. As a result, the maximum monthly pension payment for 2014 is Naf 1.028,-. Persons entitled to an old age pension married to an individual younger than 60 are entitled to a maximum monthly pension payment of Naf 704,-. The maximum premium income amount that the AOV premium can be applied to is increased to Naf 92.446,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to Naf 7.605,90. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of Naf 7.605,90 and Naf 61.741,09.

2015:⁹

In August of 2014, the CPI increased by 2.2% as compared to August of 2013. As a result, the maximum monthly pension payment for 2015 is Naf 1.051,-. Persons entitled to an old age pension married to an individual younger than 60 are entitled to a maximum monthly pension payment of Naf 719,-. The maximum premium income amount that the AOV premium can be applied to is increased to Naf 94.480,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to Naf 7.773,23. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of Naf 7.773,23 and Naf 63.099,39.

⁸ Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2014).

⁹ Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2015).



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2016:¹⁰

In August of 2015, the CPI increased by 0.9% as compared to August of 2014. As a result, the maximum monthly pension payment for 2016 is Naf 1.060,-. Persons entitled to an old age pension married to an individual younger than 62 are entitled to a maximum monthly pension payment of Naf 725,-. The maximum premium income amount that the AOV premium can be applied to is increased to Naf 100.000,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to Naf 8.227,42. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of Naf 8.227,42 and Naf 66.786,22.

2017:¹¹

In August of 2016, the CPI increased by 0.5% as compared to August of 2015. As a result, the maximum monthly pension payment for 2017 is Naf 1.065,-. Persons entitled to an old age pension married to an individual younger than 62 are entitled to a maximum monthly pension payment of Naf 729,-. The maximum premium income amount that the AOV premium can be applied to is increased to Naf 100.500,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to Naf 8.268,56. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of Naf 8.268,56 and Naf 67.120,15.

2018:¹²

In August of 2017, the CPI increased by 2.0% as compared to August of 2016. As a result, the maximum monthly pension payment for 2018 is Naf 1.086,-. Persons entitled to an old age pension married to an individual younger than 62 are entitled to a maximum monthly pension payment of Naf 744,-. The maximum premium income amount that the AOV premium can be applied to is increased to Naf 102.510,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to Naf 8.433,93. The premium is levied in part to

¹⁰ Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2016).

¹¹ Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2017).

¹² Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2018).



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individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAf 8.433,93 and NAf 68.462,55.

2019:¹³

According to information provided by the Department of Statistics (hereafter: STATS) and the Department of Social Development, the use of the CPI in order to calculate the increase in pension and premium income limit amounts for 2019 was not possible. This is a result of STATS re-basement of the CPI from the Household Budget Survey to the Classification of Individual Consumption according to Purpose. The new CPI base went into use on January 2018, meaning that figures from August 2018 could not be compared to August 2017 as they used different measurements.

Following the initial decision of the Minister of Public Health, Social Development, and Labor (hereafter the Dutch abbreviation: Minister of VSA) to not increase AOV and AWW pension amounts and premiums between 2018 and 2019, the Ministry of Public Housing, Social Development, and Labor (hereafter: the Ministry of VSA) established a taskforce which aimed to address the absence of a definitive CPI.¹⁴ At the request of the Ministry of VSA, STATS produced an estimated figure of inflation using data available from August 2017 to December 2017 in order to extrapolate for January 2018 to August 2018. The estimated CPI determined by STATS is 2.71%. The figure is comparable to the inflation rate produced by the Central Bank of Curacao and St. Maarten which published a rate of inflation of 2.7% for 2018.¹⁵ The taskforce consulted with the Department of Legal Affairs and Legislation in order to determine the legality of using an estimated CPI¹⁶, in which the department determined that the CPI is determined in relation to article 7 paragraph 3 of the National Ordinance AOV and article 11 paragraph 8 of the National Ordinance AWW.¹⁷ After consultation with the Department of Legal Affairs and Legislation, the use of an estimated CPI based on the collection of data from August 2017 and December 2017 was determined by the Ministry of VSA as a viable alternative.¹⁸

Using the estimated CPI of 2.71%, the maximum monthly pension payment for 2019 is NAf 1.115,-. Persons entitled to an old age pension married to an individual younger than 60 are entitled to a

¹³ Landsbesluit, houdende algemene maatregelen, van de tot wijziging van de artikelen 7, eerste lid, 7a, eerste lid, en 26, derde tot en met vijfde lid, van de Landsverordening Algemene Ouderdomsverzekering (Landsbesluit Indexering Algemene Ouderdomsverzekering 2019).

¹⁴ Interview with Department of Social Development.

¹⁵ Document provided in advice request. Interview Department of Social Development. Central Bank of Curacao and Aruba, *Note Economic Developments in Sint Maarten (December 2018)*, https://cbcs.spin.cdn.com/media/economic_analysis/20190430_note_economic_developments_sint_maarten_december_2018.pdf

¹⁶ Document provided in advice request.

¹⁷ AB 2013, GT no. 502, article 7, paragraph 3. AB 2018, GT no. 522, article 11, paragraph 8: [English translation: Adjustment of the pension amounts takes place from the first day of any calendar year on the basis of the increase indicated by the price index of household consumption for the month of August compared to the price index for August of the preceding year.]

¹⁸ Document provided in advice request.



maximum monthly pension payment of Naf 764,-. The maximum premium income amount that the AOV premium can be applied to is increased to NAF 105.288,02. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAF 8.662,49. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAF 8.662,49 and NAF 70.317,89.

Table 1: Overview of increases in the AOV pension and premium income limits

Year	CPI	Max. old age pension	Max. old age pension with partner	Max. premium income limit	Min. premium income limit	Unemployed with taxable income
2014	2.8%	NAf 1.028,00	NAf 704,00	NAf 92.446,00	NAf 7.605,90	NAf 7.605,90 – NAf 61.741,09
2015	2.2%	NAf 1.051,00	NAf 719,00	NAf 94.480,00	NAf 7.773,23	NAf 7.773,23- NAf 63.099,39
2016	0.9%	NAf 1.060,00	NAf 725,00	NAf 100.000,00	NAf 8.227,42	NAf 8.227,42- NAf 66.786,22
2017	0.5%	NAf 1.065,00	NAf 729,00	NAf 100.500,00	NAf 8.268,56	NAf 8.268,56- NAf 67.120,15
2018	2.0%	NAf 1.086,00	NAf 744,00	NAf 102.510,00	NAf 8.433,93	NAf 8.433,93- NAf 68.462,55
2019	2.71%	NAf 1.115,00	NAf 764,00	NAf 105.288,02	NAf 8.662,49	NAf 8.662,49- NAf 70.317,89

AWW Indexation:

The widow's pension amount is subject to differences based on the age of the widow.¹⁹ The age brackets until 2015 were: younger than 40 years, from 40 to 48 years, 49 to 57 years, 58 and 59 years. Additionally widows with a disability or who have one or more orphans are entitled to a specified pension amount.²⁰ In 2015, a new national ordinance went into effect, the National Ordinance Increasing Old Age Pension and Pension Age, changing the age brackets to: younger than 42 years, from 42 to 50 years, 51 to 59 years, and 60 to 61 years.²¹ The following section explains the changes in pension amounts and premium income limits in detail. An overview of the changes from 2014 up to and including 2019 is shown below in tables 2-4.

¹⁹ AB 2018, GT no. 522, article 11, paragraph 1.

²⁰ Ibid., article 11, paragraph 3.

²¹ AB 2015, no. 31, article 2, paragraphs a, b, and c.



2014:²²

Based on the increase in CPI between August 2013 and August 2012 of 2.8%, the widow's monthly pension increased to NAf 474-, for persons younger than 40 years old; NAf 622-, for persons from 40 to 48 years old; NAf 779-, for persons from 49 to 57 years old; NAf 1028-, for persons from 58 to 59 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAf 1028-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAf 92.446,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAf 7.605,90. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAf 7.605,90 and NAf 61.741,09.

2015:²³

Based on the increase in CPI between August 2014 and August 2013 of 2.2%, the widow's monthly pension increased to NAf 484-, for persons younger than 40 years old; NAf 636-, for persons from 40 to 48 years old; NAf 796-, for persons from 49 to 57 years old; NAf 1051-, for persons from 58 to 59 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAf 1051-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAf 94.480,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAf 7.773,23. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAf 7.773,23 and NAf 63.099,39.

2016:²⁴

Based on the increase in CPI between August 2015 and August 2014 of 0.9%, the widow's monthly pension increased to NAf 488-, for persons younger than 42 years old; NAf 642-, for persons from 42 to 50 years old; NAf 803-, for persons from 51 to 59 years old; NAf 1060-, for person from 60 to 61 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAf 1060-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAf 100.000,-. Any additional income above

²² Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2014).

²³ Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2015).

²⁴ Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2016).



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this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAF 8.227,42. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAF 8.227,42 and NAF 66.786,22.

2017:²⁵

Based on the increase in CPI between August 2016 and August 2015 of 0.5%, the widow's monthly pension increased to NAF 490-, for persons younger than 42 years old; NAF 645-, for persons from 42 to 50 years old; NAF 807-, for persons from 51 to 59 years old; NAF 1065-, for person from 60 to 61 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAF 1065-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAF 100.500,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAF 8.268,56. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAF 8.268,56 and NAF 67.120,15.

2018:²⁶

Based on the increase in CPI between August 2017 and August 2016 of 2.0%, the widow's monthly pension increased to NAF 500-, for persons younger than 42 years old; NAF 658-, for persons from 42 to 50 years old; NAF 823-, for persons from 51 to 59 years old; NAF 1086-, for persons from 60 to 61 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAF 1086-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAF 102.510,-. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAF 8.433,93. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAF 8.433,93 and NAF 68.462,55.

2019:²⁷

²⁵ Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2017).

²⁶ Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2018).

²⁷ Landsbesluit, houdende algemene maatregelen, tot wijziging van de artikelen 11 en 29 van de Landsverordening Algemene Weduwen- en Wezenverzekering (Landsbesluit Indexering Algemene Weduwen- en Wezenverzekering 2019).



Based on the estimated CPI increase²⁸ between August 2018 and August 2017 of 2.71%, the widow's monthly pension increased to NAF 514-, for persons younger than 42 years old; NAF 676-, for persons from 42 to 50 years old; NAF 845-, for persons from 51 to 59 years old; NAF 1115-, for persons from 60 to 61 years old. Widows who are either disabled or have one or more dependents who are entitled to orphan's pension can receive a monthly pension amount of NAF 1115-,. The maximum premium income amount that the AWW premium can be applied to is increased to NAF 105.288,02. Any additional income above this amount will not be levied. The minimum annual income to which the premium can be levied from is increased to NAF 8.662,49. The premium is levied in part to individuals who are unemployed for an entire year or part of a year if their income falls between the amounts of NAF 8.662,49 and NAF 70.317,89.

Table 2: Overview widow pension increases 2014-2015

Year	CPI	<40 years	40-48 years	49-57 years	58-59 years	Disabled or with one or more orphans
2014	2.8%	NAf 474,00	NAf 622,00	NAf 779,00	NAf 1028,00	NAf 1028,00
2015	2.2%	NAf 484,00	NAf 636,00	NAf 796,00	NAf 1051,00	NAf 1051,00

Table 3: Overview widow pension increases 2016-2019

Year	CPI	<42 years	42-50 years	51-59 years	60-61 years	Disabled or with one or more orphans
2016	0.9%	NAf 488,00	NAf 642,00	NAf 803,00	NAf 1.060,00	NAf 1.060,00
2017	0.5%	NAf 490,00	NAf 645,00	NAf 807,00	NAf 1.065,00	NAf 1.065,00
2018	2.0%	NAf 500,00	NAf 658,00	NAf 823,00	NAf 1.086,00	NAf 1.086,00
2019	2.71%	NAf 514,00	NAf 676,00	NAf 845,00	NAf 1.115,00	NAf 1.115,00

Table 4: Overview premium income limits increases

Year	CPI	Max. premium income limit	Min. premium income limit	Unemployed with taxable income
2014	2.8%	NAf 92.446,00	NAf 7.605,90	NAf 7.605,90- NAF 61.741,09
2015	2.2%	NAf 94.480,00	NAf 7.773,23	NAf 7.773,23- NAF 63.099,39
2016	0.9%	NAf 100.000,00	NAf 8.227,42	NAf 8.227,42- NAF 66.786,22
2017	0.5%	NAf 100.500,00	NAf 8.268,56	NAf 8.268,56- NAF 67.120,15
2018	2.0%	NAf 102.510,00	NAf 8.433,93	NAf 8.433,93- NAF 68.462,55
2019	2.71%	NAf 105.288,02	NAf 8.662,49	NAf 8.662,49- NAF 70.317,89

²⁸ Information regarding the calculation of the estimated CPI use can be found in the above section of "AOV Indexation" for the year 2019.



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In general, the SER is in favor of the establishment of a legal basis for the increases in pension amounts and premium income limits in accordance with the National Ordinance on General Old Age Pension and the National Ordinance on Widow and Orphan Insurance. However, the SER still has certain general concerns outlined below:

General concerns of the SER concerning the draft decrees:

1. The SER learned there was no CPI established for the year 2018. Based on the request of the taskforce assembled by the Ministry of VSA, STATS looked for an alternative in which an estimated CPI could be extrapolated for August 2018.²⁹ From this line of inquiry, an estimated CPI of 2.71% was calculated and given to the Ministry of VSA. The SER is concerned with the methodology used to extrapolate for the months of January 2018-August 2018 using the short timeframe of August 2017 to December 2017. Furthermore, this timeframe includes skewed data due to the economic disruptions caused by Irma in September 2017, and thus the data may not have been representative for the months of January 2018 to August 2018. While the calculation of this estimated CPI occurred under unique circumstances, the SER notes that there is a lack of clarity in how the disruption caused by the hurricane was accounted for in this estimated CPI. As the figure is not an officially published rate by STATS, the SER finds that transparency into the calculation of the estimated CPI should have been made public.
2. In practice, SZV has been paying the same pension amounts listed in the draft AOV and AWW decrees based on the approval of the Minister of VSA.^{30 31} With the passing of these national decrees, the Government has created the necessary legislation for the pension amounts and premium limits allowing pensioners to have a stronger legal basis in claiming their pensions, in particular for cases of dispute. However, the SER remains concerned about the retroactive implementation of the AOV and AWW pension amounts and premium limits. The SER urges government to start legislative procedures in a timely manner to avoid retroactive aspects in laws unless they clearly fit the legal grounds for retroactivity. This avoids discussions on the legality of decrees if these come into effect retroactively.
3. The SER observes that the explanatory note of the draft AWW decree for 2019 highlights the intention of Government to change the month basis of the CPI from August to another period in order to avoid a retroactive implementation of the national decrees. The SER learned that the changed methodology for generating the CPI by STATS does not allow for the availability of data for

²⁹ Document provided in advice request. Interview October 3rd, 2019 with the Department of Social Development.

³⁰ Social & Health Insurances, "Wage Limits & Premiums, <https://www.szv.sx/info/wage-limits-premiums/>.

³¹ The exception is the year 2014, where on the website the AOV pension is listed as Naf 1.027. However, in the year 2014, the Ministry of VSA addressed this and SZV corrected the 1 Naf difference retroactively with a pay-out in April 2015. Information received from interview with Department of Social Development and confirmed in correspondence with SZV.



the month of August as when it was previously done.³² While the change in CPI methodology will not affect the establishment of AOV and AWW pension amounts and premiums in 2020³³, other legislation which remains dependent on CPI calculations remains unaddressed. The SER confirmed that the STATS new CPI measure is done on a quarterly basis, eliminating August as a time of measurement.³⁴ This poses problems to all legislations with a legal basis of a CPI using the month of August compared to the month of August of the previous year. The SER strongly advises that existing legislation that relies on the CPI using the month of August must be adjusted in a timely manner to reflect the new CPI quarterly measurements. If adjustments to the relevant legislation are not made, executing the use of a CPI with a different timeframe will consequently not be in accordance with (existing) legislation.

4. Within the explanatory notes, the financial backgrounds are inconsistent in information. The overview of amounts provided are the reserves, benefits paid, and premiums paid for AOV and AWW at SZV. The SER notes that the year 2015 of the draft AOV decree is missing information on the benefits paid (NAf 64.608.000³⁵). The year 2016 is missing information on the premiums paid (NAf 104.970.000³⁶). The year 2017 is missing information on the premiums paid (NAf 105.663.000³⁷). Furthermore, during its research the SER learned that the financial information for the year 2017 and 2018 was not yet released by SZV to Government. The audited financial reports for the years 2017 and 2018 are currently available by SZV and should thus be consulted to update the explanatory notes of the draft AOV and AWW decrees of 2017, 2018, and 2019. In addition, the explanatory note of the draft AOV decree for 2018 includes a typographical error in the listed calculation: “(NAf 1.065 + NAf 5,-(2.0%)= NAf 1.086)” should read ““(NAf 1.065 + NAf 21,-(2.0%)= NAf 1.086)”. The SER deems it important that legislation accurately reflects the actual changes for future consultations of the law.
5. The financial consequences within the explanatory notes of the draft AOV and AWW decrees for 2018 and 2019 are incomplete as at the time of drafting the decrees certain financial information of 2018 was yet to be released by SZV.³⁸ As much of the legislation is reliant on financial information from SZV, the SER recommends that information is released by SZV in a timely manner. Consequently, when considering the change of the CPI month basis discussed in point 3, the SER

³² Interview with Department of Social Development. Correspondence with STATS.

³³ In an interview with the Department of Social Development it was highlighted that changes to the pension amounts and premium limits for 2020 will be addressed in a new national ordinance and are not reliant on the CPI.

³⁴ Correspondence with STATS. Interview with Department of Social Development.

³⁵ Social & Health Insurances, “2015 Annual Report”,
https://www.szv.sx/publicfiles/868/documents/2015_annual_report_SZV_summarized.pdf.

³⁶ Social & Health Insurance, “2016 Annual Report”,
https://www.szv.sx/publicfiles/868/documents/2016_annual-report_SZV_summarized.pdf.

³⁷ Social & Health Insurances, “2017 Annual Report”,
https://www.szv.sx/publicfiles/868/documents/2017-annual_report_SZV_summarized.pdf.

³⁸ Interview with the Department of Social Development.



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advises Government to consider the effects of the closing of financial years by SZV when drafting legislation. The financial consequences listed within the explanatory note allow for understandings into whether a fund is healthy or not in a previous financial year, and how increases in the pension amounts and premium limits will affect the fund as it stands in the previous year. The SER notes that if the financial year ends as of December 31st of any given year, taking into account the past year's financials will continue to require the retroactive passing of legislation. Nevertheless, as stated in point 2, the SER recommends Government to consider these aspects in the future in order to avoid the retroactive implementation of any legislation. Moreover, the SER emphasizes to keep in mind that the audited financial reports of SZV will only be available after the end of the financial year. Consequently, the SER recommends referring to the audited report of the past year's financials in order to implement legislation in a timely manner.

Advice:

The SER unanimously advises the Government of Sint Maarten the following:

1. That the SER is in agreement with the proposed draft national decrees, containing general measures, regarding the indexation of the AOV and AWW providing that the national decrees, containing general measures, are adjusted according to points 2 and 3 below.
2. To revise the explanatory memorandum for the National Decrees on the Indexation of General Old Age Insurance for the years 2014 up to and including 2019 to be consistent in the information provided regarding the state of the revenues, the amount of benefits paid, and the amount of premiums paid.
3. To revise the explanatory memorandums for the National Decrees on the Indexation of General Old Age Insurance for the years 2017, 2018, and 2019 and the National Decrees on the Indexation of Widow and Orphan Insurance for the years 2017, 2018, and 2019 based on SZV's audited financial reports of 2017 and 2018.
4. To amend all relevant legislation in a timely manner in accordance with the new methodology of calculating the CPI by the Department of Statistics which no longer uses August as a time of measurement.
5. To ensure that amendments made to the legislation regarding the change of the CPI prevents the retroactive implementation of legislation, while considering the availability of SZV's audited financial reports.



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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,

ir. Damien D.E. Richardson
Chairman

Gerard M.C. Richardson
Secretary-General