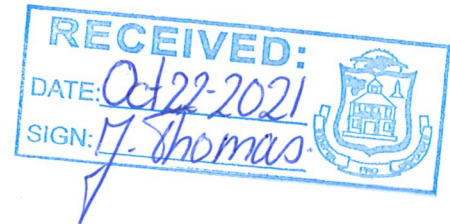




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Social Economic Council

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LETTER OF ADVICE

To the Minister of Public Health Social Development and Labor
The Honorable Minister Mr. Omar Ottley
Government administration building
Soualiga Road # 1
Philipsburg, Sint Maarten

Philipsburg, October 22nd, 2021

Our reference: SER/21/SA/016

Subject: Letter of advice concerning the draft National Ordinance changing the National Ordinance Accident Insurance and the National Ordinance Sickness insurance in relation to adjusting the wage limits.

In Dutch: *Landsverordening, van de tot wijziging van de Landsverordening ongevallenverzekering (OV) en de Landsverordening ziekteverzekering (ZV) in verband met het aanpassen van de loongrenzen.*

Honorable Minister Ottley,

Pursuant to your urgent request for advice which was received by our Council on September 20th, 2021 (dated September 16th) concerning the draft National Ordinance, regarding changing the National Ordinance Accident insurance ("*Ongevallenverzekering*") and National Ordinance Sickness insurance ("*Ziekteverzekering*") in relation to adjusting the wage limits.

Statement:

The Social Economic Council (SER) would like to point out that the SER board was not installed in a timely manner. The board has been inactive since April 30th, 2020 and held its first meeting on August 19th, 2021. The SER officially received the advice request on September 20th, 2021. The board was immediately made aware of the urgent nature of the advice. However, to be able to provide government with a comprehensive and reliable advice the subject matter requires the SER to execute adequate research. This process entails gathering data and information from relevant stakeholders which is a dynamic and time-consuming process. While various stakeholders were not in agreement with the proposed changes in the draft National Ordinance Sickness insurance and Accident Insurance Ordinance, the stakeholders that were contacted by the SER but due to time constraints could not present the SER with the requested information. Furthermore, as the proposed measure has far reaching consequences for the community, the SER would like to highlight the fact that due to the tripartite constellation the board, sufficient time is needed to deliberate the various aspects of the advice.

Given the complexity of the advice request, the SER has provided its advice in the most timely manner possible, taking the above into consideration.



The SER has evaluated the social, economic, and legal consequences of the advice request:

Background of the draft National Ordinance

The National Ordinance Accident Insurance ¹ contains rules about the insurance of employees against occupational accidents. The National Sickness Insurance Ordinance ² is health coverage that guarantees the insured population against meeting the costs associated with ill health.

The National Ordinance Accident insurance and the National Ordinance Sickness insurance regulates the right of the employee to medical treatment and nursing care, compensations for occupational disability, as well as premium obligations for both employer and employee.

The draft National Ordinance states in the Explanatory Memorandum that the current health insurance system is confronted with a number of critical problems including the negative financial status of the Accident- and Sickness insurance (ZV/OV) fund. The short-term measure in the present draft ordinance aims to improve the financial situation and stability of the respective funds. According to the Explanatory Memorandum, the measures, to be implemented as of January 1st, 2022, has a positive effect on the Sickness insurance - and Accident insurance fund. The Explanatory Memorandum also mentions that this is a short-term measure in anticipation of a mandatory, uniform health insurance ('verplichte, uniforme ziektekostenverzekering'), however the SER notes that without that legal framework, it is difficult to provide proper advice on this short-term measure.

The Explanatory Memorandum also states that the Kingdom Council of Ministers has included the immediate increase of the wage limits of the ZV/OV funds³ in the agreement with the Country Packages ("Onderlinge Regeling Landspakket Sint Maarten"), which binds both the government of Sint Maarten and the Netherland with the execution thereof.

The draft National Ordinance increases the wage limit of the National Ordinance Accident insurance from NAf 217.36 to NAf 384.62(6 day work week) and NAf 260,83 to 461,54 (5 day work week).

The draft National Ordinance increase the wage limits of the National Ordinance Sickness Insurance from NAf 217,36 to NAf 384, 62 (6 day workweek) and from NAf 260, 83 to NAf 461,54 (5 day workweek). Per year, the proposed change increases the wage limits from NAf 67.816,32 to NAf 120.000, -

Table 1: Overview proposed changes

| ZV/OV | 2015 | 2016 ⁴ - 2021 | Proposed 2022 |
|-----------------|-----------|--------------------------|---------------|
| 5-day work week | 258.50 | 260.83 | 461.54 |
| 6-day work week | 215.42 | 217.36 | 384.62 |
| Per year | 67.816,32 | 67.816,32 | 120.000 |

¹ The Accident Insurance AB 2013, GT no. 801

² The Sickness Insurance AB 2013, GT no. 802

³ No documentation received.

⁴ No wage limit increase based on CPI since 2016.



The premium related to the ZV is 12.5% total. This is shared between employer (8.3%) and employee (4.2%)

Table 2:

| | Current (Naf) | Proposed (Naf) |
|--------------------|---|---|
| | 2021 | 2022 |
| Annual Wage limit | 67.816,32 | 120.000,00 |
| Monthly Wage limit | 5.651,36 | 10.000,00 |
| ZV Premium | 12.5% Employee 4.2% Employer 8.3% | 12.5% Employee 4.2% Employer 8.3% |
| OV Premium | 0-5% | 0-5% ⁵ |

Below, the SER analyzes the impact of the proposed wage limit increase for the ZV/OV fund, private insurance companies, employees and employers.

The impact on the ZV/OV Funds

Based on research into the health of the ZV fund, the SER reviewed the annual reports of the 'Sociale Ziektkosten Verzekering' (SZV). The SER established that in 2019, the ZV fund was more than NAf 171 million in deficit. Similarly, the OV fund was more than NAf 36 million in deficit. This totals NAf 207.453 million in deficit⁶. In 2018 the combined deficit was NAf 173.160 million. Compared to the other medical funds (FZOG), the ZV and OV funds have seen a decrease in medical expenses (NAf 12.5M) as a consequence of less medical referral and travel. The decrease is a direct result of more specialisms available locally⁷. However, the ZV/OV funds has structurally been in deficit for several years (2011-2019)⁸.

| Table 3 | SZV Annual Report / Year | | | | | | | | |
|---------------|--------------------------|----------|----------|----------|----------|-----------|---------|----------|----------|
| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| Fund Reserves | | | | | | | | | |
| ZV | 6.85M | (22.32M) | (27.74M) | (9.64M) | (23.54M) | (51.17M) | (93.3M) | (136.0M) | (171.2M) |
| OV | (93.000) | (5.44M) | (9.74M) | (13.47M) | (16.04M) | (18.66M) | (24.8M) | (31.0M) | (36.1M) |
| FZOG | (2.18M) | (3.3M) | (5.07M) | (5.60M) | (8.97M) | (11.11M) | (16.3M) | (24.5M) | (33.6M) |

brackets () = deficit

In its report of September 1st 2021, the 'College financieel toezicht Curacao en Sint Maarten' (Cft) emphasizes the untenable situation of the health insurance funds on Sint Maarten, mainly the ZV/OV and Fonds Ziektkosten Overheids Gepensioeneerden (FZOG) fund⁹. The Cft advised the government to immediately take drastic measures to reform and improve the situation of the funds. The FZOG fund, also has a substantial deficit (33.6M). Additionally, the reserves of the combined SZV managed funds are projected to continue to decline¹⁰.

⁵ Varies per risk category.

⁶ SZV Annual Report 2019.

⁷ SZV Annual report 2019.

⁸ SZV Annual reports 2011-2019.

⁹ College financieel toezicht Curacao en Sint Maarten. "Reactie op tweede uitvoeringsrapportage 2021".

¹⁰ Ibid.



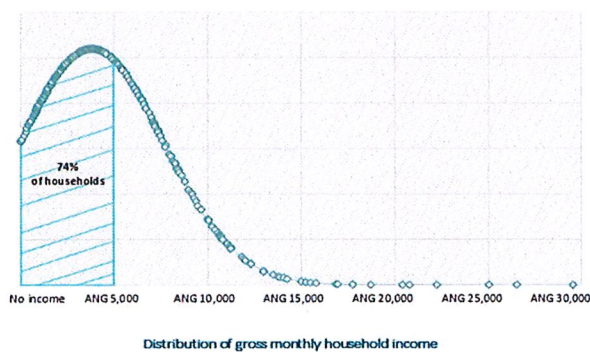
The Cft's remarks also comes on the heels of the former Kingdom Council of Ministers instruction to take measures by the end of 2016, to structurally maintain an affordable health care system and pension system¹¹. Moreover, the World Bank has projected further combined deficits up to NAf 336.4M by 2030¹².

The Explanatory Memorandum states that the proposed changes will contribute positively to both the ZV and OV funds. More specifically, the Explanatory Memorandum states that with the proposed increase of the wage limit, the number of insured increases with ca. 1365 persons. This results in an expected contribution income of NAf 12.585.00. Simultaneously, medical expenses will also increase, which is estimated at NAf 5.4000.000.

The SER established that with the proposed increase in the wage limit the number of insured will increase. Additionally, the SER confirms that the proposed increase of the wage limit from NAf 67.816,32 to NAf 120.000,- translates in to a monthly income range NAf 5.650 -10.000,- (see table 2).

To be able to objectively estimate the number of additional insured in the abovementioned income range, the SER examined the Labor Force Survey (LFS) and concluded that an estimated 1460 employed persons falls within the income category¹³. The SER determines that the estimated number of additional insured corresponds to the estimates in the Explanatory Memorandum. While the largest group of persons earn monthly between NAf 6.000,- and 7.000,-. Moreover, the SER notes that the higher the income, less persons will be added to the insurance pool¹⁴.

From the perspective of the ZV/OV funds, the SER acknowledges that the proposed changes will result in more persons insured under ZV/OV insurance and increased premium income for both funds. Medical care consumption will increase accordingly. However, the SER notes that referring to the LFS of 2019 is based on our pre-pandemic situation. In reality, as a consequence of the COVID-19 pandemic many persons are either no longer employed or are under-employed due to reduced working hours or business closures. This will have a decreasing effect on the number of new insureds and subsequently less premium income than anticipated. In addition as depicted in graph 1 below, it can be ascertained that the majority of persons have a household income up to NAf 5.000,-



Graph1: as wage limit increase there will be less number of persons added to the insured pool.

¹¹ Besluit van 8 September 2015. Staatsblad van het Koninkrijk der Nederlanden."...Het nemen van maatregelen voor het einde van 2016 om het zorgstelsel en de oudedagsvoorzieningen structureel betaalbaar te houden.."

¹² World Bank. St. Maarten Public Expenditure Review. October 2020.

¹³ Labour Force Survey 2019. P30

¹⁴ Labour Force Survey 2019.



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Overall, the SER is of the opinion that the anticipated premium income will be lower than calculated, as calculations are based on pre-COVID-19 data, while medical consumption and expenses will increase due to the newly insured. The SER is of the opinion that the benefits for the ZV/OV fund will be moderate, and the SER emphasizes that the other measures to manage costs must be implemented at the same time to prevent further deficits.

The SZV Funds

The SER has critically pointed out in its previous advice, “Letter of Advice concerning the revised draft National Ordinance Regulating a Mandatory General Health Insurance”, that the funds managed by the SZV should be better managed¹⁵. Simultaneously, the SER acknowledges that various factors contribute to the situation of the funds such as lack of compliance, medical care consumption of the insured, outstanding payments from government. At present government owes the SZV NAf 67.1M.

As mentioned in the previous advice¹⁶, the SER recognizes that the following factors prevent the SZV from managing the funds successfully.

1. Compliance: * Government is not consistent with payments and has payment arrears of NAf 67.1 million guilders¹⁷;
* SZV states that compliance has been reduced to 65% since the COVID-19 pandemic. However, the SZV estimates compliance to increase to 80% with the proposal¹⁸.
2. The SZV insured population, mainly the ZV/OV insured, has a high consumption pattern, high medical costs and lack of cost awareness;
3. Little focus on preventive healthcare;
4. Varying medical specialties which are still not available on Sint Maarten which results in medical referrals abroad. Although medical referrals abroad significantly declined for the ZV/OV fund as a result of more specialties available locally¹⁹.

The SER remarks that the delayed payment from government is a major contributor to the precarious financial position of SZV managed funds.

Additionally, whereas various factors determine health care consumption, this can also be a result of insufficient focus on preventive health care combined an ageing population, as medical cost increase with age. The SER recognizes that although some effort is made, there is insufficient focus on preventive health care of chronic illnesses, which could potentially reduce the high medical consumption pattern in the long term. Specifically, the “Health Survey of Sint Maarten²⁰” revealed that the health of population has not improved and that there is a high prevalence of chronic illnesses in the community which is now compounded by COVID-19.

¹⁵ SER advice with reference SER/18/SA/024

¹⁶ Ibid.

¹⁷ Government owes SZV NAf 67.1M. SZV Annual Report 2019.

¹⁸ Information SZV.

¹⁹ Significant decrease in medical referrals of NAf 12.5M. SZV Annual Report 2019.

²⁰ How Healthy is Sint Maarten -Saint Martin Health Survey Report 2015.



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Nevertheless, the SER learned of the following efforts by the SZV to be able to better manage the various funds, manage costs, improve the efficiency and stop abuse of the system:

| Project | Goal | Phase |
|--|--|-------------------------------|
| GP-information system | to improve quality of primary care; eliminate misuse of funds, improve health care efficiency, and contribute to the decrease of cost of healthcare. | finalized in 1st quarter 2022 |
| Pharmaceutical management system. | supports pharmacies with monitoring task: dosage of medications, interactions, contraindications, and overconsumption among others. | ongoing |
| Pharmaceutical cost containment program. | reduce pharmaceutical costs by using preferred suppliers, next to other wholesalers, the use of generics registered pharmaceuticals already registered in the Netherlands. | ongoing |

The impact for Private Insurance

The impact of the proposed changes for the private insurance companies will vary.

While it is difficult to accurately determine how many persons will be shifted from each private insurance company, as those currently privately insured for medical coverage are distributed across the various insurance companies on the island. The SER is aware that there are three (3) main insurers including brokers that offer medical coverage. The potential financial effect will vary per insurer as private insurers set a premium based on age and medical history for individuals whereas premium for their group portfolios are based on claim history. These risk-rated premiums increase yearly and includes a deductible. The financial impact of premium income will differ per insurance company as some group insurance can vary from 25-200 persons or more. For the larger groups, the impact can be significant.

Next to an age-related premium, the SER established that private medical insurance excludes pre-existing conditions and applies maximum coverage caps. In the event the individual with pre-existing conditions is accepted, a maximum coverage cap is also applied. Persons are accepted up to the age of 65 by some insurers and others offer coverage only up to 50 years with unlimited coverage. Due to risk selection based on age, pre-existing conditions or premium increases, persons with too high risk either cannot afford insurance or are excluded.

The SER anticipates that this shift to the ZV fund will include persons with pre-existing conditions and change the portfolios of private insurers. The SER is aware that the medical care product of private insurers operates at a loss, but keeping this product creates the opportunity to offer their other products to clients. However, the shift of this group of insureds from private insurance to the ZV coverage under the new proposal, should have a downward adjusted premium- effect for the remaining insured clients, if applied.

Nonetheless, from the perspective of the insurer, the proposal will result in less premium income and revenue due to loss of clients. This loss will vary across the various insurance companies depending on their portfolios. The SER is of the opinion that overall, as a result of loss of premium income and business (less claims), government will collect less profit- and turnover tax.



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The impact on employees

The proposed wage limit increase to NAf 120.000 will have an impact on the employees with monthly income between NAf 5.650 and 10.000,- as previously stated. Persons earning above NAf 5.650,- will now be eligible for Sickness insurance (ZV). These employees will shift from their current private insurance schemes to the sickness and accident insurance managed by the SZV. The premium for the ZV insurance is 4.2% which includes dependents.

Most persons in the income range above NAf 5.650,- have individual private insurance or are part of private group insurance. For employees with individual private insurance, the proposed change in wage limit may be beneficial if their private insurance premium is high due to either pre-existing conditions or regular medical use. On the other hand, if there are no pre-existing conditions, there are employees who, from a financial perspective, may be negatively impacted by the proposal. As the private insurance premium is determined by age and risk, for the younger persons the increase wage limit could cost more. For persons in group insurance the impact depends on the present claim history of the group. If there are a few persons with high medical consumption, this could result in high premiums whereas the group premium can be low as well. However, if the employer pays a larger share of the premium, the proposed wage limit increase will cost the employee more, depending on employer-employee arrangement. Moreover, employees will now have to adjust to the SZV's regulations versus their current service by the private insurer.

The impact for the employer(s)

The premium of the ZV insurance for the employer is 8.3%. The employer will have to pay 8.3% over the salaries above NAf 5.650,- to 10.000,-. This results in higher costs for the employer. The employer is also responsible for the OV premium which varies depending on risk category (0-5%). The OV-wage limit changes, but in principle there are no financial implications for the employer with regards to the OV, unless the employer wants to offer larger coverage for their employees.

From a medical coverage perspective, employers have two groups of employees. Those that currently fall under the current ZV wage limit and the remaining employees above the wage limit.

Presently, employers either purchase private group insurance for employees earning above NAf 5.650,- or some employees arrange his/her own insurance as per negotiated contract. The number of employees in the monthly income range NAf 5650-10.000,- varies per business. Additional, costs will vary per month/ per employee (NAf 6000-10.000 earners). While the SER establishes that costs for the employer may increase, this impact will vary per employer.

To be able to concretely illustrate the financial impact of the proposal for employers and employees the SER actively sought information from several companies. Additionally, the SER would like to emphasize that the proposal must be seen in tandem with the other reform proposals and cuts approved by the Parliament, such as the 12.5% reduction in employment benefits for civil servants and those employed at (semi-) public sector entities (The Temporary National Ordinance COVID-19 for cuts in the employment conditions for civil servants).



Sociaal Economische Raad
Social Economic Council

One employer (A) with more than 100 employees has estimated that 51 employees who are now covered with private group insurance will now shift to the ZV/OV with the new proposal. Additionally, the employer arranges supplemental vision and dental insurance for those currently ZV/OV insured. The costs for this employer will increase by 23%. The employer will pay ca. NAf 136,000.00 (136K) more per year. Overall employee costs increase with an average of 23%.

Employer A

| Health Care Insurer | Yearly Present Costs (Employer) | Yearly Proposed Costs (Employer) | Yearly Employee Costs (Present) | Employee Costs Proposed | Yearly Cost per employee (Present) | Yearly Cost per employee (Proposal) |
|--|---------------------------------|----------------------------------|---------------------------------|-------------------------|------------------------------------|-------------------------------------|
| SZV insured | 100,397.48 | 435,000.00 | 50,803.75 | 220,000.00 | 1,953.99 | 3,055.56 |
| SZV insured - suppl. privately insured | 60,840.00 | 168,480.00 | - | - | - | - |
| Private Insurance | 685,302.36 | 379,245.00 | 146,688.48 | 81,177.12 | 1,424.16 | 1,424.16 |
| Total | 846,539.84 | 982,725.00 | 197,492.23 | 301,177.12 | | |

Additionally, hospital coverage by the ZV is 3rd class versus 2nd class hospital coverage that is presently covered with private insurance. For medical care abroad, there will be less choice compared to their private insurance group coverage and the absence a broker which provides advice.

However, based on the business model of private insurance, the SER anticipates that for some employers with group insurance, the proposal can have a positive effect as with group insurance the premium also increases yearly, especially if there are one or more employees in the group with medical conditions which increases the risk profile, claim history of the group and the premium as a result. Generally, there will be a redistribution of costs from the private insurer to the ZV/OV- funds. Particular employers see the proposal as an added benefit, as their salary fall under the wage limit of NAf 10.000,- per month. Yet for several other employers the proposed measures will have a negative financial impact as due to group insurance combined with claim history and discounts, premiums may be favorable.

Loss of wages

As stipulated in the National Ordinance sickness Insurance, the employee is entitled to loss of wages in the event the employee fall sick ('ziekengeld'). The employee is paid 80% of their wages. Administratively, the employer pays the employee, and the employer is reimbursed via the SZV. The draft ordinance proposes to keep the loss of wages capped to the current yearly wage limit amount NAf 67.816,32. The Explanatory Memorandum states this is to prevent further deterioration of the fund. Persons privately insured currently do not have a system of loss of wages or the costs are carried by the employer. For the private insured persons who will now shift to the SZV under the new proposal, the employer will receive 80% reimbursement for sick days (up to NAf 67.816,32). This results in a benefit for both employers who now covers these costs and for employees currently without paid sick days. This benefit is lower than the scenario of the implementation of the NAf 120.0000 cap. Simultaneously, the capped amount can function to disincentivize long term sick leave and the reduced the liability for substitution. The SER recognizes the need for other measures to keep the fund healthy.



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Social Economic Council

Macro-economic impact

The SER acknowledges that it is important to have a healthy social insurance fund as part of these funds are used for investment purposes that benefits the country in the long term.

Simultaneously, the SER recognizes that as a result of the COVID-19 pandemic and measures to mitigate the spread of the coronavirus, the economy as a whole has been impacted. Economic activity was reduced in 2020 and 2021 due to lockdowns and partial reopening measures. The Central Bank of Curaçao and Sint Maarten established that real GDP dropped by 22.4% in 2020, caused by containment measures amid the pandemic in the restaurant & hotel and yachting sector. The economic contraction was compounded by a decline in international travel and cruise industry resulting in less stay-over and cruise visitors and less spending. Economic recovery is projected to be moderate in 2021 with real GDP growth rate of 3.4%. Overall full economic recovery remains uncertain and is dependent on vaccination percentage²¹. The current instability of the economy in addition to the proposal will have a negative impact on collected Turn over Tax (TOT) and Profit tax overall. However, the SER did not receive data from companies to substantiate and quantify this impact. In 2020 the TOT decreased by 18.8% due to COVID-19. Overall, government has seen a decrease in revenues of 11.29 % in 2020 because of COVID-19²². Additionally, for persons who will have to pay more premium than they currently do, this will impact their purchasing power, especially if combined with the implementation of 12.5% reduction in benefits. The cumulative result of less wage will result in a reduction in wage tax.

Yet, the World Bank has projected a further depletion of the social funds if no measures are taken and advises government to improve the situation of the fund's reserves²³. The Cft also advises government to immediately take drastic measures for the health of the social funds as government is the ultimate solvency guarantor for the SZV.

Societal perspective

From the societal perspective the SER observes that the proposal only concerns a shift of already insured persons to the ZV/OV fund. This can be concluded from the draft national ordinance.

Overall, from the perspective of medical coverage, the SER notes that the proposed wage limit increase solely focusses on a financial benefit for the SZV while nothing is mentioned about package increase (e.g. vision and dental) and does not improve the position of sole proprietors, taxi- and bus drivers, pensioners or others who currently do not have medical coverage and remain uninsured. The SER regrets to note that the uninsured is left out with this measure.

The legal wage limit ceilings combined with the exclusions based on pre-existing conditions or high premiums, exposes the situation on the island where certain groups of persons remain unable to obtain medical coverage. This exacerbates the disparity among residents. The SER is of the opinion that

²¹ Central Bank of Curaçao and Sint Maarten. "CURAÇAO AND SINT MAARTEN SEE A MODERATE RECOVERY IN 2021". Press release 2021-011

²² Country Sint Maarten Economic Indicators Half year developments 2020.

²³ World Bank. St. Maarten Public Expenditure Review. October 2020.



Sociaal Economische Raad
Social Economic Council

everyone is entitled to medical coverage and care regardless of social economic status. This further upholds international human rights treaties which are applicable to Sint Maarten²⁴.

Moreover, because of the current wage limit, persons with a monthly salary higher than *NAf* 5.650, - have no choice but to purchase private medical insurance. This will now be shifted to persons with a salary above *NAf* 10.000,-

SER previous advice

In its previous letter of Advice on Mandatory General Health Insurance, a more extensive advice, the SER advised (next to a number of recommendations) to increase in the wage limit of all funds managed by the SZV, to *NAf* 100.000,-²⁵. As stated in that advice, the SER believes that raising the maximum premium income above *NAf* 100.000, will not significantly increase premium income for the SZV, as the group of persons earning above this amount is limited²⁶. Taking the analysis on the impact of the proposal to increase the wage limit to *NAf* 120.000,- into consideration, the SER maintains its former position on the increase. The SER is of the opinion that this will mitigate the financial, social and economic impact on the stakeholders concerned.

Implementing legislation

The Government intends for the draft ordinance to be implemented as per January 1st, 2022²⁷. The SER notes that when implementing a new law a fair balance should be made between the financial losses for stakeholders, the possible loss of coverage for employees²⁸ and the need for additional funding of ZV/OV fund.²⁹ In general, when weighing the interests of stakeholders, governments can mitigate the negative effects of new laws by making timely announcements and implementing measures limiting the interference of social rights³⁰, such as through (part) compensation, transitional measures or the use of an extraordinary exception clause also known as a "hardheidsclausule".³¹

Application

Taking into consideration that the government's aim to have the draft ordinance finalized and implemented by January 1st, 2022, it can be concluded that the stakeholders will not receive sufficient time to prepare for the financial and legal ramifications the draft ordinance may have for the stakeholders (private insurance companies, brokers, employees and employers). As such it can be considered unjust to expect all stakeholders, more specifically employers, to have made

²⁴ Universal Declaration of Human Rights. 1944. International Covenant on Economic, Social and Cultural Rights. 1966

²⁵ SER advice with reference SER/18/SA/024. P5 and P21

²⁶ Ibid. P4

²⁷ Explanatory notes Draft Law

²⁸ Negatively affected persons also include persons that will be obligated to transfer from private insurance to SZV coverage which could result in lower health coverage for care they are privy to under their current insurance.

²⁹ Kamerstukken II 2012/2013, 33 400 XV, nr. 7, p. 5. (Advice request Council of State on Transitional law in social security legislation).

³⁰ Article 12.1 of the ICESCR guarantees the social right to "the enjoyment of the highest attainable standard of physical and mental health." As access to quality health insurance greatly influences the level of attainable standard of health, a violation of social rights can include the requirement to register with SZV in the event the insured's health insurance coverage is limited and additional coverage or choice is not attainable under the new law.

³¹ Kamerstukken II 2012/2013, 33 400 XV, nr. 7, p. 5. (Advice request Council of State on Transitional law in social security legislation).



Sociaal Economische Raad
Social Economic Council

the proper arrangements with their insurance companies and existing policies. Furthermore, employees in need of specific care cannot wait for the draft ordinance to be adopted to ensure that they are insured in 2022. As such, the SER is of the opinion that sufficient time to prepare for the implementation of the proposal must be granted.

Retroactive implementation

In principle retroactively application of new legislation should be avoided as changes are made to existing rights and legal relationships which predate the implementation of a draft ordinance, which is in contravention of the principle of legal certainty. However, in the event government opts for retroactive application the decision must be properly motivated. The SER is of the opinion that retroactive implementation must be avoided considering the negative – and adverse effects of retroactive application.

Based on the analysis above the SER has the following concerns. The SER is concerned:

1. that the other instruments to efficiently manage the SZV funds will require accelerated implementation
2. that there are no financial projections which shows that the proposed increase will keep the ZV/OV healthy in the future
3. that there is no impact study on the effects of the measure on employers, employees, private insurers and the SZV
4. that privately insured will lose benefits while paying more, specifically for group insurance when the employer covers the (most) costs
5. that the urgency of the measure focusses solely on the financial situation of the ZV/OV funds and not the increase in coverage of the uninsured population and the issue of exclusions based on pre-existing conditions.
6. that the costs for some employers and employees will increase significantly (see P8)
7. that the projected number of insured persons to join the ZV/OV fund will be lower, as calculations are based on pre-COVID-19 data
8. that due to a lower than projected number of new insureds, the financial benefit for the SZV will be lower than calculated
9. that SZV does not have sufficient staff to accommodate the increased number of insured
10. that the time frame for implementation (January 1st, 2022) is too short to allow the various stakeholders to prepare adequately
11. that the retroactive nature of the draft ordinance will have a negative financial effect if implemented retroactively as both employer and employee may have to pay a lumpsum contribution
12. that the draft ordinance does not include a provision such as a transition arrangement 'overgangsregeling' of 3- 6 months to accommodate existing private insurance policies and care arrangements
13. that the effects of SSRP have not been considered
14. that the proposal must be considered in tandem with other Country package reform proposals an cuts such as the 12.5% of benefits for (semi-) public sector



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Advice:

Based on available data and information including the above concerns, the majority of the SER advises the Government of Sint Maarten;

1. Despite government's precarious financial situation it is important to keep up to its financial obligations and urgently finalize the payment agreement of the outstanding NAf 67.1M owed to the SZV and to comply with the regulations of the medical funds.
2. To urgently implement the other cost containment and efficiency improvement projects to efficiently manage the SZV funds.
3. To increase the wage limit to NAf 100.000 as indicated in the previous SER advice³², which will mitigate the negative impact of the proposal on stakeholders.
4. Not to implement the proposal retroactively. This will have negative effect on employer, employee, and private insurance companies.
5. To include a transition provision of 3-6 months in the draft the National Ordinance Accident Insurance and the National Ordinance Sickness insurance.

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

We trust to have sufficiently informed you herewith.

Respectfully,

ir. Damien D.E Richardson
Chairman

Gerard M.C. Richardson
Secretary-General

³² SER advice with reference SER/18/SA/024 Mandatory General Health Insurance.