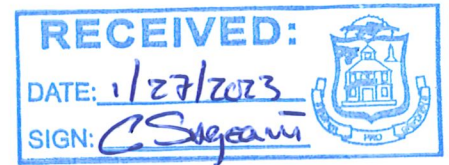


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Social Economic Council



**LETTER OF ADVICE**

The Honorable Minister of Public Health, Social Development,  
and Labor, Mr. Omar Ottley  
Government Administration Building  
Soulaliga Road no. 1  
Philipsburg

January 27<sup>th</sup>, 2023

Our reference: SER/23/SA/31

Re: draft ordinance changing the referenced CPI in relevant legislation.

Honorable Minister Ottley,

On December 27<sup>th</sup>, 2022, the Social Economic Council (hereafter: SER) received the urgent solicited advice request from the Ministry of Public Health, Social Development, and Labor regarding the reparations made to the national ordinance of the AOV, the national ordinance of the AWW, the national ordinance minimum wage and the national ordinances ZV and OV (hereafter: the draft reparation ordinance). The advice request states that the changes in the relevant ordinances are urgently needed for the finalization of the required legislation to adjust the general old age pension (AOV), widower's and orphan pension (AWW) payouts for 2023.

The SER has evaluated the social, economic, and legal consequences of the advice request and came to the following conclusions:

**Background.**

In 2018, the department of Statistics (hereafter: STATS) changed the calculation method of the Consumer Price Index (CPI) via the re-basement of the CPI from the Household Budget Survey to the Classification of Individual Consumption according to Purpose. The SER learned that the changed methodology for generating the CPI by STATS does not allow for the availability of data for the month of August as was previously done, as the CPI is now determined per quarter instead of per month. The Explanatory notes states that the quarterly method provides less fluctuations due to scarcity and gives a more reliable picture of inflation. This change presents a legal challenge for the government to keep to the legislative stipulations on indexation using the month of August.



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In its letter of advice concerning the draft national decrees on the Indexation of General Old Age Insurance and Indexation of Widow and Orphan Insurance for the year 2022<sup>1</sup>, the SER emphasized its concerns regarding the use of the new method of the CPI calculation without the legal basis. The SER advised government to immediately amend all relevant legislation in accordance with the new method of calculating the CPI by (STATS) which no longer uses August as a time of measurement. Similarly, considering the length of legislative trajectory, the SER advised to use quarter two (Q2) CPI for indexation structurally to be able to meet the target of implementing the index on January 1<sup>st</sup> of the new year.

The draft reparation ordinance proposes to amend the national ordinance of the AOV, national ordinance of the AWW, national ordinance minimum wage and the national ordinances (sickness insurance) ZV and accident insurance (OV). The SER acknowledges government's efforts to adjust the relevant legislation in line with the new CPI calculation method.

### **General observations of the SER concerning the draft reparation ordinance.**

1. The SER notes that under I- A (changes to the AOV ordinance):

The changes are related to a yearly indexation using quarter two (Q2) CPI calculation, with the implementation of the newly indexed amounts as of January 1<sup>st</sup> of the coming year. The SER observes that there is a new addition of paragraph 4 to article 7 which concerns the minister sending a notice in advance to the executing agencies. The Explanatory notes only states that it is customary for the minister to send a notice in advance to the executing agencies such as the tax office. No additional substantiation is provided as to why it is of essence to formalize this practice. In absence of an elaboration in the Explanatory notes, the SER is concerned that the legalization of this notice can be used to circumvent the legal trajectory of the national decrees on indexation. The SER is of the opinion that the change to using quarter two (Q2) for the CPI calculation gives sufficient time for the indexation to be implemented in a timely manner and relevant institutions to be informed accordingly. However, the SER is of the opinion that this measure, if necessary, should only be used in this exceptional circumstance.

The SER observes that the proposed amendments in the draft ordinance gives less discretionary authority to the minister, for example by changing the words "kunnen" to "worden.." (moet bepaling) regarding indexation in the relevant articles. While the SER can understand the reason for this measure, the SER is concerned that there is now no room for the minister to decide not to index based on social- and or economic shocks including other unforeseen situations. Some past examples are, hurricanes, pandemic etc. Therefore, the SER advises to include an article which covers the option not to index solely based on these situations and for a limited period (e.g., 1 year). This timeframe and explanation must also be included in the Explanatory Notes.

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<sup>1</sup> Letter of advice with reference SER/22/ SA/26. November 24<sup>th</sup>, 2022.





## 2. The SER observes under II-A (changes to the AWW ordinance):

The SER observes that there is a new addition of paragraph 9 to article 11 which concerns the minister sending a notice in advance to the executing agencies. The SER is of the opinion that the change to using quarter two (Q2) for the CPI calculation gives sufficient time for the indexation to be implemented in a timely manner and relevant institutions to be informed accordingly. In absence of an elaboration in the Explanatory notes, the SER is concerned that the legalization of this notice can be used to circumvent the legal trajectory of the national decrees on indexation. However, the SER is of the opinion that this measure, if necessary, should only be used in this exceptional circumstance.

The SER agrees with the changes to article 12, the addition of paragraph 5, which provides for the legal basis to index the orphan pension accordingly. This addition ensures the legal certainty for this vulnerable group.

### The financial paragraph

According to the changes in this draft reparation ordinance, the minister must index the AOV and AWW yearly. The SER is concerned about the medium- and long-term effect on the AOV – and AWW funds managed by the Social and Sickness Insurances (SZV). In its previous letter of advice<sup>2</sup> the SER highlighted the fact that the AOV/AWW funds are used to (cross) finance the ZV/OV which results into the AOV/AWW funds being less ‘healthy’ than reflected in the Explanatory notes of the draft AOV/AWW decrees. Moreover, the SER advised to execute in-depth research into the viability and sustainability (medium- and long term) of the social funds, more specifically the AOV and AWW funds considering the funds are used for cross financing. The updated research must also consider aging and (new) economic shocks. As it stands, the true medium to long term impact on the AOV and AWW funds remain uncertain, although the funds are ‘healthy’ at this time.

### *Financial overview AOV, AWW and ZV/OV funds*

AOV	2021 <sup>2</sup>	2020	AWW 2021	AWW 2020	ZV	2021	2020	OV 2021	OV 2020
premium	96.6M	90.5M	7.4M	7.0M	Premium	60.8M	57.1M	7.6M	7.7M
benefits	94.4M	82.3M	5.6M	5.1M	Benefits	89.7M	84.4M	12.3M	12.8M
pensioners	8.8K	8.5K	437	561	clients	29.7K	28.1M	18.5K/122	17.9K/122
average benefit pensioner	10.7K	9.7K	12.8K	9.2K	Average per client	3.0K	3.0K	663	714
Reserves (in guilders)	480.3	462.3	152M	143M		(251.1M)	(210.0M)	(47.5M)	(42.0)

<sup>2</sup>Letter of advice with reference SER/22/ SA/26. November 24<sup>th</sup>, 2022.



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**Advice:**

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

1. To execute the changes relevant to the CPI as proposed
2. To include an elaborate substantiation in the Explanatory notes which covers paragraph 4 of article 7 of the national ordinance General Old Age pension (AOV)
3. To include an elaborate substantiation in the Explanatory notes which covers paragraph 9 of article 11 of the national ordinance Widows and Orphan Pension
4. To execute in-depth research into the viability and medium- and long-term sustainability of the AOV and AWW funds. The research must consider the aging population and (new) economic shocks.

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