



Sociaal Economische Raad  
Social Economic Council

7/22/16  
Hon. Philip Lee, Minister of SA  
St. Maarten

Bestuurskamer  
Datum: 22 JUL 2016  
ontv.:  
**FILE COPY**

**LETTER OF ADVICE**

To the Prime Minister of Sint Maarten  
The Honorable Mr. William Marlin  
The Minister of Public Health, Social Development and Labor, E. Lee  
The Minister of Finance, R. Gibson Sr.  
The Minister of Education, Culture, Youth and Sports, S. Jacobs  
The Minister of Tourism, Economic Affairs, Traffic and Telecommunication, I. Arrindell  
Clem Labega Square  
Philipsburg

Tyra Philip



Philipsburg, July 21<sup>st</sup>, 2016

Our reference: SER /16/SA/053

Re: Letter of advice "Draft National Ordinance Youth Unemployment Fund" [ Concept landsverordening fonds jeugdwerkloosheid]

Honorable Prime Minister Marlin,

In reply to your request for advice which was received by our Council on June 15<sup>th</sup>, 2016 concerning the changes to the "Draft National Ordinance Youth unemployment fund" (in Dutch: concept landsverordening fonds jeugdwerkloosheid) we inform you as follows:

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

**Background:**

Youth unemployment in Sint Maarten is high. The Labor Force Survey executed by the Bureau of Statistics in 2013, indicates that the percentage of youth unemployment between the ages of 15 and 24 years was 25.9% (2,160 persons). The unemployment rate of our youth is highest of all unemployed persons, with male youth ranking highest at 28.2% in 2013 which increased from 27.9% in 2011. Female unemployment rate decreased from 27.4% in 2011 to 23.5% (2013)<sup>1</sup>. According to the International Labor Organization (ILO), in 2013, the Global youth unemployment rate was 12.6%. Other countries in the Caribbean region, such as Barbados 27.6% (2010), Jamaica 30.1% (2011) and Sint Lucia 34.0% (2010)<sup>2</sup>, also show higher percentages of youth unemployment compared to the global average.

In the draft National Ordinance Youth Unemployment Fund, it is stated: "this high youth unemployment rate has different individual and social costs and risks, including difficult behavior by unemployed youth, financial and other costs for society. In the Governing program, the government has indicated that it will take the necessary measures to reduce the high employment rate under youth by implementing a dynamic labor market program. In execution thereof, the government approved the policy document 'An active labor market program to reduce youth unemployment in Sint Maarten'. The program is based

<sup>1</sup> Labour Force Survey 2013

<sup>2</sup> Monica Parra Torrado "Youth Unemployment in the Caribbean", Caribbean Knowledge Series No. 88362 World bank, 2014.

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on international best practices and a special training fund will be created to generate the necessary funds to finance the program”.

The government indicates in the draft ordinance that the implementation of similar programs has been executed in the past namely the *'Employability through training'* program as part of the Social Economic Initiative (SEI) program. The SEI program budgeted NAf. 388.500, - for 250 participants of which 17 participants received a job. For the financing of the new program *'An active labor market program to reduce youth unemployment in Sint Maarten'*, the government will establish a fund to acquire the necessary resources. Based on the solidarity principle, the fund will be co-financed via a NAf0.01 levy on electricity used by the community. The Fund will be managed by a foundation. To safe guard the integrity of the foundation, the laws of the Corporate Governance Ordinance will be applicable to the Fund.

The Government stated the following reasons to establish a youth unemployment fund:

1. To promote the provision of sufficient employment in accordance with the Constitution article 20 sub 1.
2. The desire to reduce youth unemployment in Sint Maarten by establishing a foundation in execution of the policy plan *'An active labor market program to reduce youth unemployment in Sint Maarten 2015'*.
3. The Government of Sint Maarten faces financial difficulties in its legal obligation to have a balanced budget, therefore the execution of the policy plan cannot be financed from Governments' budget.
4. The need to establish a Fund to finance the execution of the policy plan and to organize the way the Fund will attain its financial resources.

### Summary

The Youth Unemployment Fund is aimed to reduce unemployment in Sint Maarten.

The SER highlights that the heterogeneous groups among youth each with their specific challenges, must be addressed. Among the various groups within youth unemployed are 1) those graduated youth with no legal status between the ages of 18-25 that due to legal regulations are unable to obtain a work permit; 2) graduated youth with Dutch nationality and unable to find a job; 3) youth who have dropped out of school; 4) youth that are underemployed.

With respect to the program design, the *'Active Labor Market program'* must be clear on which youth group will be targeted and designed to meet their needs. The program as currently designed does not take the above mentioned heterogeneity into consideration. Due to the intricacies of the different groups among youth and the diverse challenges they are confronted with, the program should be tailor-made and offer an integrated approach in support of the needs of the targeted group of individuals. Moreover, lessons learnt from the local example, *"Employability through Training Program* must be analyzed, challenges addressed and evaluated to avoid the same results in a new program due to similar issues. To avoid mismatch between demand and supply of labor, appropriate assessments of the available jobs must be made as well as assessments of what skills businesses are alternatively seeking.



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In 2015 there were 117 registered unemployed youth between the ages of 16-25. The program '*An active labor market program to reduce youth unemployment in Sint Maarten*' is aimed to target 500 youth. Taking the success rate of the ETPP program (8.5%) including the challenges encountered into consideration, the SER has its concerns with regard to the recruitment process, mainly to find 383 unemployed youth who are not registered and the eventual success of providing them with a job.

Next to implementing a new program, there should be more focus on complementary policies to stimulate economic growth. The SER notes that job creation is not among the objectives of the program. The SER is of the opinion that next to the training of youth, government must also create complementary policies to promote economic growth and job creation in order to ensure that once trained, individuals can gain employment.

Due to the socio-economic effect on the lower income households, the SER is against applying the solidarity principle via electricity use. Additionally, due to the various concerns mentioned in the elucidation of this advice, the SER is against the establishment of the Fund and advises government to place the financing of the program as a priority on government's budget.

The SER is of the opinion that in accordance with their responsibilities, the Minister of Public Health, Social Development and Labor must have a more central role in the program along with the Minister of Education, Culture, Youth and Sports and the Minister of Tourism, Economic Affairs, Traffic and Telecommunication.

#### **Advice:**

Given the information that was provided and the time constraint, the SER in its meeting of Thursday, July 14<sup>th</sup>, 2016, **unanimously** advises the Government as follows:

1. Not to execute the program until the main issues recognized by the SER are addressed.
2. To initiate, prior to starting the program, a comprehensive research into the reasons why youth are unemployed (not as part of the program) including an analysis of the results and challenges of the Employability through Training Program. Additionally, the labor market, family structure, legal status and education should also be taken into account.
3. Based on the findings of point 2, the program should include measurable targets.
4. Not to establish the Fund, but instead, to finance the program '*An active labour market program to reduce youth unemployment in Sint Maarten*' as a priority from government's budget.
5. To initiate the consultation process with the key stakeholders (e.g. Minister of Public Health, Social Development and Labor, the Minister of Education, Culture, Youth and Sports and the Minister of Tourism, Economic Affairs, Traffic and Telecommunication, businesses) in order to create the necessary consensus and cooperation for the execution of the program.
6. To ensure that any employment program implemented include lessons learnt from local experiences and are complemented with policies to stimulate the economy including labor market reforms.



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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,

Oldine V. Bryson-Pantophlet  
Chairwoman

Gerard M.C. Richardson  
Secretary-General

### **Elucidation**

The SER recognizes that the challenges of youth unemployment are universal and commend the Government of Sint Maarten for its acknowledgement, and in particular its willingness in seeking a solution.

With reference to the reasons stated in the draft ordinance by the Government to justify the establishment of the Youth Unemployment Fund and due to the direct relation of the draft ordinance and the policy note '*An active labor market program to reduce youth unemployment in Sint Maarten 2015*' the board of the SER deems it suitable to equally provide its concerns on the aforementioned program in addition to the draft ordinance. The SER has the following concerns:

#### **I. Policy: 'An active labor market program to reduce youth unemployment on Sint Maarten'**

It is stated in the policy note '*In general, to reduce youth unemployment, governments conduct active labor market programs aimed at increasing the employability of this group. Specifically focused at those youngsters who are neither in employment nor education nor training (NEET)*'.

With respect to the above mentioned program the SER will like to address the following:

##### **Target group**

With reference to the target group youth, the SER will like to point out that the youth target group on Sint Maarten is diverse with specific challenges that must be addressed. It is necessary to distinguish the different types of youth. Among the various groups within youth are:

Youth, who came to the island under the work permit of their parents. Due to the compulsory school ordinance<sup>3</sup> that ensures children are entitled to an education they attend school. However, once they are graduated, they are unable to work legally because they are now independent adults without a work permit. To obtain a work permit one has to be 25 years old or the request is denied<sup>4</sup>. So between the ages of 18 to 25 youngsters are unable to gain a work permit. Moreover, these youngsters are not in possession of a residency permit due to the stipulations in the Ordinance regulating Admissions and

<sup>3</sup> National Ordinance Compulsory Education AB 2013 no. 590 – articles 1-3

<sup>4</sup> Regulation on work permits AB 2013, GT no. 73 [uitvoeringsbesluit arbeid vreemdelingen]- article 8



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Expulsion<sup>5</sup>. The unemployment rate in 2013 of those persons (18-25) not born on Sint Maarten and living for more than five years on the island is 17.7% (128 persons)<sup>6</sup>.

- graduated youth with Dutch nationality who are having difficulties to find a job.
- youth who have dropped out of school and are not able to find work, and remain unemployed.
- youth that are underemployed. 'For example, those persons holding a part-time job despite desiring full-time work....'<sup>7</sup>.

It is not clear which youth group the program targets. The SER finds it essential to explicitly make clear which group is being targeted in the program.

#### A tailor made program

Additionally, the program must take the heterogeneity of the various groups among the youth and the respective challenges into account. The program as currently designed does not take the above mentioned heterogeneity into consideration. Due to the intricacies of the different groups among youth and the diverse challenges they are confronted with, the program should be tailor-made and offer an integrated approach in support of the needs of the targeted group of individuals as the 'one size fit all' approach may not be effective. Based on the Labour Force Survey 2013, male youth have the highest unemployment rate (28.2%), which indicates that this group may require an alternate approach.

#### Other legislation

The SER must also highlight that for training and job placement for youth ages 15-18, the labor regulations [Arbeidsregeling] and [Arbeidsbesluit jeugdige personen] also be kept in consideration, while the Ordinance regulating Compulsory Education [Leerplichtslandsverordening]<sup>8</sup> stipulates that 15-18-year-old youth must attend school.

The program further indicates that assessments of skills needed and available in the labour market will be executed. The SER is of the opinion that those assessments should be executed prior to implementing the program and not as part of the program. To avoid mismatch between demand and supply of labor, appropriate assessments of the available jobs must be made as well as assessments of what skills businesses are additionally seeking.

#### Details and financing of the program and Fund

The SER established that a detailed overview of the five-year program, constituting the various phases and the related costs is lacking. Equally, a financial overview of all operational costs of the fund should be specified and expressed in a percentage of the funds' total budget. As the execution of the five year-program will cost NAf. 35.8 million<sup>9</sup>, the SER believes it is necessary to provide a comprehensive overview of the distribution of the costs as well as a program design.

#### Complementary policies

<sup>5</sup> National ordinance on Admission and Expulsion AB 2013, GT no. 498; AB2014, no.23

<sup>6</sup> Bureau of Statistics, Sint Maarten

<sup>7</sup> Results Labour Force Survey 2013

<sup>8</sup> Leerplichtslandsverordening AB 2013, GT no.590

<sup>9</sup> Policy document: 'An active labor market program to reduce youth unemployment in Sint Maarten'



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Although policies to stimulate economic growth and other labor market reforms is mentioned in the policy document as fundamental elements for job creation, the SER notes that job creation is not among the objectives of the program. The SER is of the opinion that next to the training of youth, government must also create complementary policies that stimulate economic growth and job creation in order to ensure that once trained, individuals can gain employment.

## **II. Draft Ordinance- Explanatory Memorandum**

### **1. An active labor market program [ Een dynamisch arbeidsmarkt beleid]**

In the Explanatory Memorandum, reference is given to a similar program implemented in the past namely *Employability through training* (hereafter: ETTP) program. The ETTP program was a combination of two SEI projects '*From Welfare to Employment*' and '*Adult on the job training*'. The description provided indicated that the program was created for 250 persons, and a total of 17 persons received job placement. It was further mentioned that the budgeted amount was Naf 388.500, -. However, based on findings of the SER<sup>10</sup>, the Employability through Training program, a Social Economic Initiative (SEI), actually had a budgeted amount of Naf 913.500, -, a total of 200 persons assessed and 17 persons received a job, which is 8.5% employment success rate. The SER has concerns as it relates to the other 183 persons who enrolled in the program and the reasons those persons were not successful in job placement. Findings of the report indicate that the dropout rate was 17% and total dismissals accounted for 13%<sup>11</sup>. Another challenge of the program was the participation rate of businesses. Of the 93 businesses approached, 28 of them signed a Partnership Agreement and only 14 businesses provided job placements. The reasons for the aforementioned should be addressed and evaluated to avoid repeat in a new program due to similar issues. Partnering with businesses and involving them from the onset (from candidate assessment and selection), is key for the success of the program.

Equally, it seems as though over Naf. 378.000, -<sup>12</sup> is not spent. From the results presented in the report of the ETTP program, it can be concluded that the program has not been effective in achieving a large number of persons employed. Among those persons who completed the program but had not received job placement, it can be concluded that they received technical and social skilled training as well as workplace experience which can benefit them in the future. Yet, based on the local example, the SER is concerned about the success rate of the new program. In 2015 there were 117 registered unemployed youth between the ages of 16-25<sup>13</sup>. The new program '*An active labor market program to reduce youth unemployment in Sint Maarten*' is aimed to target 500 youth. Considering the success rate of the ETTP program (8.5%) including the challenges encountered, the SER has its concerns with regard to the recruitment process, mainly to find 383 unemployed youth who are not registered and the eventual success of providing them with a job.

### **2. The responsible Ministers [de verantwoordelijke ministers]**

The SER finds it remarkable that the responsible ministers for the Youth Unemployment Fund (hereafter: the Fund) are the Ministers of Finance and General affairs and not the Minister of Labor who is responsible for labor affairs. It is mentioned that the Minister of Labor will be involved. However, nor

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<sup>10</sup> Employability Through Training Project End of Project Report 2011-2013 (groups 1-4)

<sup>11</sup> Reasons for dismissal are not adhering to the program conditions such as being present at training or at work

<sup>12</sup> Financial overview: Employability Through Training Project End of Project Report 2011-2013

<sup>13</sup> Overview registration youth (15-24)-Department of Labor affairs.



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in the draft ordinance nor in the policy document<sup>14</sup> is it clear how the minister responsible for labor will be involved. The SER is of the opinion that in accordance with their responsibilities, the Minister of Public Health, Social Development and Labor must have a more central role in the program along with the Minister of Education, Culture, Youth and Sports and the Minister of Tourism, Economic Affairs, Traffic and Telecommunication.

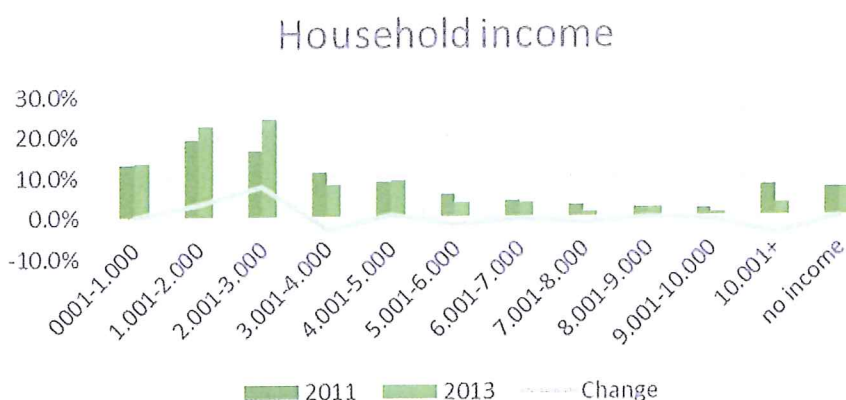
### 3. The Youth Unemployment Fund

Due to lack of financial resources on the budget of Government of Sint Maarten, the Fund will be created and established. Co-financing of the Fund will be through an imposed contribution of the community of NAf 0,01 per kWh electricity used. This choice is based on the solidarity principle.

#### Solidarity principle

While the SER recognizes the problem at hand and Government's goal in reducing youth unemployment, the solidarity principle cannot be applied only when Government deems it suitable. Government justifies applying the solidarity principle because of effects of youth unemployment such as various individual and social costs and risks including risky behavior, financial and other costs for the community. There are other areas in society that requires urgent attention with a social-economic effect on the community, which can similarly fall under the solidarity principle.

The application of a levy on the use of electricity by the entire community will have a negative effect for certain groups in society. Currently, households on Sint Maarten already have relatively high electricity bills. The proposed solidarity principle will result in driving the lower income households further into financial burden because they pay a relatively larger share of their income for electricity. For example, households using 1400 kWh electricity per month will have to pay NAf. 14, - more on their bill. From the graph below it can be deduced that a substantial part of the population (>24%) earn less than NAf. 3000, - (net). Due to the socio-economic effect on the lower income households, the SER is against applying the solidarity principle via electricity use.



Source: Labour Force Survey- Bureau of Statistics

<sup>14</sup> 'An active labor market program to reduce youth unemployment in Sint Maarten 2015'



#### Co-financing [medefinanciering]

The SER takes note that throughout the draft ordinance reference is consistently made to co-financing of the Fund although no mention is made of additional financial mechanisms for the Fund in the draft ordinance. One financing mechanism in particular the Naf 0,01 cent per kWh of electricity used by the clients of N.V. GEBE is mentioned. For transparency purposes the SER urges Government to expound upon alternative financing mechanisms for the Fund.

#### **4. The electricity supplier [de elektriciteitsleverancier]**

Electricity supplier N.V. GEBE will be charged with the responsibility of the collection, administration and the transfer of the contribution to the Fund.

#### Consultation process:

The SER has established that although N.V. GEBE is considered a key stakeholder for the Fund, to date representatives of N.V. GEBE have not been consulted in the process. Considering the important role that N.V. GEBE will have for the Fund, the SER considers this lack of consultation when drafting the program and ordinance an omission pertaining to due diligence [zorgvuldigheidsbeginsel] which is at the core of drafting an ordinance. Furthermore, N.V. GEBE has various clients with various contract types that must be taken into consideration. These issues have to be addressed with N.V. GEBE prior to establishing a contract.

#### Contract [civielrechterlijke overeenkomst]

With respect to a contract with N.V. GEBE to regulate the collection, administration and payment of contribution to the Fund, the scope of the Articles of Incorporation (AOI) of GEBE N.V. must be taken into consideration. The proposal of Government must be in accordance with the existing articles. Additionally, the SER is of the opinion that the draft ordinance should include some facets of the contract.

#### Collection

The SER also has concerns with the collection of the contribution by N.V. GEBE. According to N.V. GEBE 1% per year of outstanding fees are not collected from clients due to multiple reasons such as foreclosure, clients abruptly leaving the island and non-payment for other reasons. This will have an effect on the anticipated income generated for the Fund (see financial paragraph).

#### Financial paragraph [financiele paragraaf]

The Government erroneously states in the financial paragraph that the use of electricity on Sint Maarten is on average 40-45 megawatt per hour. The SER has established<sup>15</sup> that electricity use fluctuates between 27 and 55 megawatts during day and night. However, this fluctuation is too rough to use for the calculation of the anticipated income for the Fund.

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<sup>15</sup> Information from N.V. GEBE





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The SER has established that in 2015, the total kWh's sold was 337.412.686<sup>16</sup>. Using the NAf 0,01 per kWh as proposed by Government will result in a NAf 3.374.126,86 (337.412.686 x NAf 0,01) per year of generated income for the Fund. However, as mentioned previously, N.V. GEBE has uncollected fees of 1% per year. This will have a negative effect on the Fund (NAf 33.741, -). Over a five year<sup>17</sup> period this contribution mechanism will generate approximately 16 million guilders per year. The policy document estimates a total amount of NAf 35.8 million guilders<sup>18</sup> for the program. The total contribution via N.V. GEBE to the Fund is thus insufficient for the execution of the program.

The estimation in the draft ordinance of 394.200.00 kWh used is an overestimation of electricity used by the community. Additionally, there is an error in amounts used (per year or per month) in anticipated income calculation (last paragraph on page 5). The SER recommends the government to refer either to a monthly amount or a yearly amount to prevent these errors and misinterpretation of anticipated income.

## 5. The Youth Employment Foundation [ de stichting]

### The Foundation and Integrity

The draft ordinance correspondingly provides for the establishment of a Governmental Foundation 'Youth Employment Foundation' (hereafter: the Foundation), and mistakenly indicates that article 43 sub 3 provides the legal basis thereof. However, the SER has established that article 43 concerns effective oversight [toezicht] and review of the Country's financial policy and not the legal basis for creating a foundation. The legal basis for creating a foundation [privaatrechterlijke rechtspersoon] is embedded in article 46 sub 3 of the National Accountancy ordinance [comptabiliteits Landsverordening].

It is mentioned that the task of the Foundation is to manage the Fund and that the ministers shall nominate board members based on a still to be established profile. The SER wishes to point out that Book 2 of the Civil Code<sup>19</sup> dictates what must be included in the Articles of Incorporation including a description of the profile of board members.

With respect to integrity, the Government of Sint Maarten will require board members to submit a Certificate of good conduct [verklaring van goed gedrag] for the appointment on the board of the Foundation. However other requirements of board members are also laid down in Book 2 of the Civil Code and coincides with the provisions made in the Articles of Incorporation in addition to the stipulations in the National Ordinance Corporate Governance. With respect to costs of the Foundation, reference is being made of costs of the foundation, but these costs are not specified. The SER emphasizes that since the Foundation and the Fund would be financed via public funds the cost should be clearly specified. (see articles below 1-6).

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<sup>16</sup> See point 14

<sup>17</sup> 'An active labor market program to reduce youth unemployment in Sint Maarten 2015'

<sup>18</sup> 'An active labor market program to reduce youth unemployment in Sint Maarten 2015'

<sup>19</sup> Book 2 Civil Code-Title 1 General provisions and Title 2: The Foundation



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Given the aforementioned concerns outlined under points 3) the Youth Unemployment Fund; 4) the Electricity supplier and 5) the Youth Employment Foundation, as well as concerns regarding the manageability of the Fund outside the regular checks and balances of Government, the SER is against the establishment of the Fund. Instead, given importance of the effects of youth unemployment, the SER is of the opinion that the financing of the *'An active labour market program to reduce youth unemployment in Sint Maarten'* should be placed as a priority on government's budget within the already embedded accountability and checks and balances.

### Consultation process

The SER finds it unfortunate that the Government failed in its due diligence with regard to the consultation process. Key stakeholders approached by the SER have not been consulted and included in the draft ordinance Youth Unemployment Fund. The basis for the consultation process begins with the start note [startnotitie] in identifying key stakeholders for their input. This process is imperative for the success of the Fund and the program. The SER underscores that in order to execute the program successfully, key stakeholders (Ministry Public Health, Social Development and Labor and the Ministry of Education, Culture, Youth and Sports etc.) and civil society, via representative organizations, unions, businesses, should also be consulted to create consensus and cooperation for the program.

### Articles 1-6

Although the SER is against the establishment of the Fund, the SER still wishes to highlight further omissions and additional concerns with respect to articles 1-6 of the draft ordinance:

#### Articles 1 and 2

The Minister of Public Health, Social Development and Labor, the Minister of Education, Culture, Youth and Sports and the Minister of Tourism, Economic Affairs, Traffic and Telecommunication should be included under sub 1 a in the draft ordinance.

Nowhere in the draft ordinance is the term "Youth" clearly defined. It should be clear in the draft ordinance which specific youth group within youth the fund is aimed at. Reference in the policy document *'An active labor market program to reduce youth unemployment in Sint Maarten'* is made of youth ages 15-24, however in the media mention has been made of persons aged between 18-30 years old<sup>20</sup>.

The SER advises government to follow the international standards set out by the United Nations (UN). The UN has defined for statistical consistency across regions, 'youth', as those persons between the ages of 15 and 24 years.

Moreover, the lifespan of the Fund ought to be linked to the program *'An active labor market program to reduce youth unemployment in Sint Maarten'* as the Fund is being established to facilitate the execution of the program.

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<sup>20</sup> <http://sxmislandtime.com/front-page-headliners/37657-pm-meets-with-rene-wilson.html>



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### Article 3

Reference is being made to co-financing of the Fund however, the draft ordinance only mentions one financing mechanism in particular the Naf 0,01 cent per kWh of electricity used by the clients of N.V. GEBE. See comments above in point 3: 'The Youth Unemployment Fund' and 4: 'The electricity supplier [de elektriciteitsleverancier]'.

