

TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 19)

EXPLANATORY MEMORANDUM

1. General section

Article 77 of the draft Constitution of Sint Maarten provides for the institution of advisory boards concerning legislation and administration. This draft national ordinance provides for the institution of an advisory board that is important for the social economic development of country Sint Maarten, the Social-Economic Council (hereinafter referred to as 'the SER'). As is customary in the Kingdom, the SER has a tripartite composition. In addition to three representatives of employers and three representatives of employees, three independent experts are appointed.

The statutory task of the SER (see Article 2 of this draft) is to advise the government on all important matters of a social economic nature. In view of the representative composition, the government is informed, through the advice of the SER, of the social support base for policy proposals with social economic consequences. This makes the SER an important part of the government's decision-making process. In addition to advising at the request of the government, the SER can also issue advice on social economic matters on its own initiative. In addition to its advisory role, the SER of the Netherlands Antilles also played the role of a consultative body for the two social partners represented in the SER, known as its 'forum function'. This promotes consultation within the SER between the employers' organisations and employees' organisations. This function is not explicitly included in the description of the task, but arises from it. This was also the case in the Netherlands Antillean situation.

The draft is based on the national ordinance containing general measures regulating the institution of the Social-Economic Council of the Netherlands Antilles (P.B. 1970, 136). Apart from the changes described below, there are no substantive changes in relation to the Antillean regulation, although the formulation has been modernised.

The principle that the advice of the SER is public is laid down in Article 78 of the Constitution. The way in which this is implemented is regulated in the draft national ordinance open government. Pursuant to Article 10 of the draft national ordinance open government, the Minister of General Affairs publishes the advisory reports.

A sum of ANG 1 million has been reserved in the IVB funds managed by USONA for the formation of the SER. Resources for the functioning of the council will be allocated in the long-term budget of the country of Sint Maarten.

2. Article by Article Section

Articles 1 and 2

These Articles are adopted from Article 1 of the Antillean national decree. In contrast to e.g. Parliament, the Council of Advice and the General Audit Chamber as high councils of state, the SER is not mentioned in the draft Constitution. It is one of the other permanent advisory boards concerning legislation and administration, which can be instituted by national ordinance pursuant to Article 77.

Article 3

The SER of the Netherlands Antilles consists of a maximum of 18 members and that of Aruba of a maximum of nine members. It is proposed that the Sint Maarten SER should consist of a maximum of nine members (and nine deputy members). Owing to the small scale of Sint Maarten, it is conceivable to start in a smaller setting. The members will be appointed by national decree. A chairman and deputy chairman will be chosen from among the members of the SER (Article 10).

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Article 5

This provision is adopted from the Antillean regulation and requires residence in Sint Maarten as a condition for membership. Dutch nationality is not required. For the functioning of the Council, there is no need for such a restriction on the group of persons from which members can be drawn.

Article 6

This provision contains a number of positions that are incompatible with membership of the Council and is adopted from the Antillean SER decree. The list is more limited than the list of incompatibilities for members of the Council of Advice as a high council of state, a number of which are explicitly mentioned in the draft Constitution.

Articles 7-9

These provisions contain the reasons for the suspension and dismissal of the members of the Council and a procedural regulation, and are adopted from the draft national ordinance Council of Advice. The Antillean regulation on the SER was too limited in this regard.

Article 11

The SER has a secretariat that supports the SER in its advisory and consultative tasks. This could include drawing up draft advisory reports, conducting preliminary surveys, documentation and process management. The secretariat is under the official direction of the Secretary. The staff of the secretariat (in the run-up phase) could consist of an economist or a lawyer and a number of supporting staff. The provision is adopted from the current Antillean SER decree.

Article 12

Pursuant to the Antillean regulation, the members step down every two years. In the interests of promoting continuity, this term has been increased by one year. Furthermore, the members can be reappointed immediately, even after previous reappointments.

Article 15

Article 15 provides that the members of the Council participate in consultations and vote without being bound by a mandate or instructions. This provision is adopted from the existing regulation and is intended to ensure a certain degree of independence from the organisation that nominated the member. Despite the fact that the members are nominated by employers' organisations and employees' organisations, they are appointed in a personal capacity. The position of the Ombudsman has been added to the incompatible positions.

Article 16

Article 16 is new and contains a regulation that serves to guarantee the impartiality of the members. The provision is drawn from Article 25 of the draft national ordinance concerning the Council of Advice and Article 23 of the Dutch Industrial Organisation Act, in which the Dutch SER is regulated.

Article 19

Article 19 is new and provides that the Council shall lay down further rules concerning its working methods in rules of order. This is adopted from the Dutch Act.

Article 22

This Article provides for the enactment of the financial facilities by national decree, containing general measures. The members of the SER serve as members on a part-time basis. The regulation of the remuneration at the national ordinance level is not desirable in the interests of the necessary flexibility.

Article 23

This Article serves as an assurance that the SER, and in particular, the secretariat, are provided with sufficient means to perform the statutorily assigned task properly.

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