

# **Rules of Conduct of the Council of Advice of Sint Maarten**

Enforcing the independence of the Council and the quality of its advice

## **I. Introduction**

The Council of Advice strives to guarantee the principles of democracy and the Rule of Law in St. Maarten, by providing independent advice to Government and to Parliament, which is effective, accurate, and of high quality. In order to realize this, the core values of the Council are taken into account at all times. These values relate to: integrity<sup>1</sup>, soundness<sup>2</sup> and justice<sup>3</sup>.

The integrity, soundness and justice aspects of this rules of conduct have been included in the Rules of Order of the Council of Advice. More specifically, these rules ensure that the independence and the impartiality of the Council, its vice-chair, members and extraordinary members are guaranteed individually. These rules are discussed in paragraph II and are the foundation for the proper and reliable functioning of the Council.

In short, the Council of Advice is an independent body, which in spite of possible external pressure shall not give advice in any other way than for which it stands. In the rules of conduct, an explanation is given regarding the manner in which the Council of Advice shall preserve its independence. Furthermore, in the rules of conduct in question, attention has been given to avoiding (political) partiality and the semblance of such. This entails that the vice-chair, the members and the extraordinary members of the Council of Advice shall state their views regarding the topics of advice, without (political) prejudice. The vice-chair, the members and the extraordinary members are also expected not to publicly propagate any political preferences, for example by affixing party-political stickers to their cars or attaching such flags to their cars.

In order to strive for the highest quality and impartiality in its advice, the Council will utilize assessment tools previously agreed upon covering three areas, namely (1) the policy-analytical assessment, (2) the judicial assessment and (3) the legal technical assessment. The advice shall not be realized on any other grounds than these. By using these assessment tools one is not only acting impartially in this case, but it further promotes the quality of the advice. After all, the Council derives its authority from the quality and impartiality of its advice.

Prior to compiling the advice the Council uses these assessment tools in order to produce high academic-level advices. The rules of conduct to enhance the quality of the advice shall be discussed in paragraph III.

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<sup>1</sup> By integrity is understood: adhering to the legislation because one is convinced that this is the proper manner in which to act, not because of external influences.

<sup>2</sup> By soundness is understood: well founded.

<sup>3</sup> By justice is understood: acting in accordance with democratic and constitutional principles, guaranteeing the fundamental human rights, including social civil rights.

## **II. Guaranteeing Impartiality and Independence of the Council**

By definition, membership of the Council is a part-time function and is therefore often performed in addition to a main function and/or another job. One must not lose sight of the fact that performing other functions promote the social involvement of the members, which in turn helps the advisory process. The following should, however, be taken into account:

- 1. Functions incompatible with the vice-chairship and the membership of the Council**
  - a. The members and extraordinary members of the Council do not fill any offices or functions which are incompatible with membership and of which performance is undesirable in view of a proper fulfilment of the membership in the Council or the confidence therein.
  
- 2. Reporting main and other functions**
  - a. Every (extraordinary) member must submit a written report to the vice-chair of his main or other functions, paid or not paid, at the time of or after his appointment.
  - b. The vice-chair submits a written report of his main or other functions, paid or not paid, which he holds at the time of or after his appointment, to the Council.
  
- 3. Criteria for main or other functions and other issues, which could cause a conflict of interest.**
  - a. A conflict of interest constitutes a situation in which a person serves more than one interest, which could influence each other to such an extent, that the integrity of either one is at risk. Establishing of conflict of interest is therefore tantamount to the question, whether or not in the case of a(n) (extraordinary) member, other interests play such a role, thereby causing the possibility that an advice may not be realized objectively and impartially.
  - b. As criteria for the other offices or functions to be performed by the vice-chair and the other members of the Council, the following shall be used:
    - The risk that the vice-chair or the (extraordinary) member must excuse himself as a result of another function, personal or business interests;
    - The degree in which the organization or comparable organizations to which the main or other function is related, is a stakeholder, in a topic of advice;
    - The risk of conflict of interest.
  - c. The vice-chair or, as the occasion arises, the Council, subjects the main or other functions to be performed by the (extraordinary) member in question to the criteria mentioned in the abovementioned point.

#### **4. Reporting conflict of interest**

- a. Every (extraordinary) member who is of the opinion that there is a matter of conflict of interest involving himself or another member shall bring this to the attention of the vice-chair.
- b. In cases whereby there is a matter of conflict of interest involving the vice-chair, the (extraordinary) member brings this to the attention of the oldest appointed member of the Council.

#### **5. Maintaining independence and impartiality**

- a. The vice-chair or the other member in question of the Council shall not participate in the deliberations and shall not cast a vote, if this could be harmful to the impartiality and independence of the Council or if there is the appearance that the impartiality and independence of the Council could be damaged. The (extraordinary) member in question shall not take part in the deliberations in the abovementioned case.
- b. The vice-chair shall notify the (extraordinary) member in question as soon as possible in writing whether or not, in connection with the impartiality and independence of the Council, there are objections to occupying the main or other function; the (extraordinary) member in question will neither be able to participate in the deliberations nor vote in regard to the topic at hand. In that case the (extraordinary) member in question shall be heard by the Council.
- c. If it concerns the vice-chair, the notice meant in the previous sentence shall be effectuated by the oldest appointed member. In that case the vice-chair shall be heard by the Council.
- d. If the vice-chair, in connection with the impartiality and independence of the Council has objections to the (extraordinary) member occupying a main or other function, the (extraordinary) member in question will neither be able to participate in the deliberations nor to vote regarding a topic of advice. If this (extraordinary) member persists in occupying the position or function in question, the entire Council shall decide.
- e. If a member or extraordinary member, in connection with the impartiality and independence of the Council has objections to the vice-chair occupying a main or other function, the vice-chair will not be able to participate in the deliberations nor to vote regarding a topic of advice. If the vice-chair persists in occupying the position or function in question, the entire Council shall decide.
- f. exercising of an office or function by the vice-chair or participation in the deliberations and participation in the voting by the vice-chair with regard to an advice topic and the vice-chair persists in the exercising of the office in question or the function in question, the entire Council shall decide.

### **III. Rules of conduct for promoting quality of the advice.**

#### **6. Research.**

- a. Before the Council of Advice takes a standpoint on the draft proposal for which advice will be given, a thorough research shall be conducted with regard to the topic of the proposal. The Council shall strive to maintain an academic level.
- b. In order to guarantee the objectivity of the Council's advice, the Council of Advice shall rely solely on facts, or on views which are widely shared academically/based on academic research.

#### **7. Participation of members and extraordinary members**

The members and extraordinary members shall make their expertise available before the start of the research and before a draft advice is drawn up.

#### **8. Guaranteeing the quality of the advice**

The Council of Advice shall take the time necessary to come to an advice.

#### **9. Foundations for assessments**

The Council of Advice reviews a draft or proposal solely on the basis of the previously established assessment tools, consisting of a policy- analytical, judicial and legal technical assessment. These assessment tools are analogous to those of the Council of State in the Netherlands.

##### *Policy-analytical assessment*

The policy-analytical *assessment* (Du:BAT) deals with the critical analysis of the policy proposal.

An important point of interest is the elucidation to the proposal. Is the reason for this new law or measure clearly defined? And is this line of reasoning convincing?

The policy-analytical assessment consists of three sections:

1. Description of the problem: What is the problem? Why is this a problem? And for whom? What is the context? These and other questions come up for discussion.
2. Approach to the problem: Is this regulation a(n) (effective) solution for the defined problem?
3. Execution and enforceability: Is the proposed execution adequate and can the regulation be enforced? Are there sufficient means and manpower available to execute and enforce the regulation?

When dealing with the policy-analytical aspect, the Council though not necessarily exclusive, shall examine the question whether or not and if so, to what extent the measures which are encountered in the draft law are proportional and effective for the intended purpose. The Council respects the fact that the development of the chosen policy is the prerogative of Government and/or Parliament, and therefore exercises restraint while analysing the policy.

#### *Judicial assessment*

The judicial assessment evaluates the judicial quality of the proposal. It concerns two main divisions

1. Review against higher law: Is the proposal in conflict with (International) higher law? The Council of Advice looks at the written and unwritten law.
2. Does it fit within the existing law: Does the proposal fit within the existing legal system? And, is the draft proposal even necessary within this framework ?

#### *Legal technical assessment*

With the legal technical assessment the technical quality of the proposal and the elucidation to the proposal are evaluated. Technical aspects as logical and systematic structure, intrinsic consistency and terminology are scrutinized. This assessment is effectuated on the basis of the Instructions for regulation of Sint Maarten and the Guidelines for the realization of legislation and regulation for Sint Maarten.

### **10. Drawing up the advice**

- a. The task of the Council of Advice is to think along constructive lines with the legislator and regulator. The advice must therefore be effective and concentrated on the relevant issues which the topic or proposal is related to. If appropriate, the Council may endorse the vision of the legislator or the regulator.

### **IV In conclusion**

Even though it falls outside of the scope of the rules of conduct, the Council concludes with the following points, which are taken into account for promoting the core values and enforcing the relevant rules of conduct.

These rules of conduct are equally applicable to the Secretariat.

The Council of Advice shall act as transparent as possible. The Council shall publish its advices in its annual report, on its website and in the media, when the advices have been made public by Government. In this way, everyone is able to take note of the activities of the Council.

Indirectly these publications moreover, may contribute to the compliance with the rules of conduct. After all transparency offers the possibility of verifying if the Council has complied with its rules of conduct.

In order to make the work of the Council as accessible as possible for the local population, advices shall be translated where possible or an English summary shall be provided.

In conclusion the Council of Advice, shall as stated in article 22 of the Rules of Order, execute a self-evaluation, once a year, prior to July 1<sup>st</sup>, which is solely intended for internal use of the Council, in order for the Council to remain vigilant at all times regarding compliance with the rules of conduct as such. On the basis of this self-evaluation the rules of conduct may be revised if there is reason to do so.