

LABOR AND SOCIAL SECURITY IN SINT MAARTEN

A BALANCED, FEASIBLE AND SUSTAINABLE APPROACH FOR
REFORMS IN THE LABOR MARKET AND THE SOCIAL
SECURITY SYSTEM OF SINT MAARTEN

REPORT

seo • amsterdam economics



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Summary

The labor market and social security system of Sint Maarten can be strengthened through a balanced package of reforms aimed at increasing employee insurance, increasing the financial sustainability, increasing procedural efficiencies, and fighting poverty.

Sint Maarten and the Netherlands agreed upon the country package ('landspakket') Sint Maarten. Part of the reforms concern the labor market (measure E.1 in the country package) and the social security system (measure E.4 in the country package). This report presents an integrated package of reforms, based on two underlying reports by SEO Amsterdam Economics and Amsterdam Bureau for Economics.

Four general problems and four specific problems are identified that are relevant for reforming the labor market and social security system of Sint Maarten. General problems that need to be addressed are: insufficient compliance and enforcement, the lack of frequent and structured social dialogue, underinvestment in human capital, and a lack of adequate information for individual workers, social partners, and the government itself. Specific problems related to labor and social security are: employee risk related to unemployment and disability, the financial sustainability of the state pension AOV, the inefficiency of procedures related to labor migration and dismissal, and poverty.

The improvements and reforms proposed in this report, contribute to a better functioning of the labor market and the economy, the fight against poverty, provide greater income security and contribute to sustainable public finances. The integrated package of policy reforms results in a net improvement in public finances (government and SZV), and neutrality or a slight increase in employer expenses. The proposed reforms have been tested for economic, financial and social viability and sustainability. The recommended reforms and their desired main outcomes are as presented in the table.

It is essential that social partners and stakeholders play a role in the entire process of implementing these reforms, that a programmatic and project-based implementation path is followed, and that a governance structure is installed which coordinates the implementation, support, steering, monitoring, and reporting.

Recommendation	Desired outcome
Introduce an unemployment benefit scheme	Less employee risk, less poverty
Abolish Cessantia, while maintaining severance pay	Increase efficiency and improve functioning of the labor market
Differentiate ZV and OV employer premiums in order to stimulate sickness prevention	Less employee risk, less poverty, higher quality of labor
Automatically index the AOV eligibility age to life expectancy	Ensure financial sustainability
Formalize financial assistance for elderly with an incomplete AOV	Less poverty
Streamline and fasten work and residence permit procedures	Increase efficiency
Streamline and fasten dismissal procedures	Increase efficiency
Develop new legislation for temporary agency workers	Less employee risk
Automatically index the minimum wage, Financial Assistance (FA), and AOV benefits to inflation (CPI)	Less poverty
Strengthen incentives for FA recipients to accept paid work	Less poverty

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1 Introduction

Sint Maarten and the Netherlands agreed upon the country package ('landspakket') Sint Maarten. Part of the reforms concern the labor market (measure E.1 in the country package) and the social security system (measure E.4 in the country package). This report works out these reforms.

In 2022, on behalf of Sint Maarten and the Netherlands, SEO Economisch Onderzoek (SEO) and Economisch Bureau Amsterdam (EBA) carried out assessments of the labor market and social security of Sint Maarten. These assessments revealed various bottlenecks and gaps in the existing policies and resulted in recommendations for improving the functioning of the labor market and strengthening the social security system. SEO and EBA have also calculated the financial effects of the proposed improvements and tested them for feasibility and support. During the various steps in these studies, the social partners, stakeholders and experts were consulted and informed about the research results, recommendations and calculations. Finally, SEO and EBA have drawn up implementation plans and made proposals for how the governance surrounding the implementation can be organized. An essential element in this governance is the role of the social partners in the implementation process.

This report is the final piece for both studies and serves as a starting point for the implementation of the proposed improvements in labor market and social security policies. Based on both studies, consultations and group discussions with social partners and experts, this document proposes a balanced, feasible and financially sustainable package of improvements in labor market and social security policies.

Chapter 2 contains a problem analysis. It identifies four general problems and four specific problems with regard to the labor market and social security that form the basis for policy reforms and improvements. Chapter 3 describes the package of reforms and improvements that provide a solution to the problems identified. These reforms and improvements relate to: income security in the event of unemployment and disability, pensions, foreign workers, dismissal, and poverty. In chapter 4, a route for implementation of this package is outlined.

Reforming and improving the functioning of the labor market and social security affects workers, employers and society as a whole. Employees and employers often have a shared interest, while sometimes their interests are at odds with each other. This entails that, when reforming the labor market and social security, there must be willingness on the part of the social partners to compromise on certain aspects, in order to reach agreement on a package that safeguards the social and collective interests of Sint Maarten and thereby serving the interests of both employees and employers in the longer run. The package proposed in this report is aimed at this end, and provides for improvements and reforms that serve the collective interest of Sint Maarten and do justice to the position of both employees and employers in a balanced manner.

2 Problem analysis

We identify four general problems in Sint Maarten which are relevant for this analysis, and four problems which are specific for the labor market and social security system in Sint Maarten.

2.1 General problems and shortcomings

2.1.1 Insufficient compliance and enforcement

Several bottlenecks in the functioning of the labor market relate to non-compliance to labor legislation and insufficient enforcement: abuse of temporary contracts, employment of foreigners without a working and/or residence permit, non-compliance with labor regulation, etc. Lack of compliance and enforcement also relates to social security, leading to overdue payments of taxes and premiums and improper use of social security benefits. There are also indications of abuse and fraud with social security benefits in both the Dutch and the French side of the island.

Non-compliance is a problem that cannot be attributed solely to employers and employees. It also happens that the government and executive organizations are not compliant with legislation and regulations and the signals about this are persistent. Examples are non-compliance with statutory deadlines for permit procedures, abuse of the scheme regarding temporary contracts, and (major) arrears in the payment of compensation to employers for continued payment of wages in case of sickness and disability of employees.

2.1.2 Lack of frequent and structured social dialogue

Social dialogue between employer associations, labor unions and the government does not take place on a structural basis in Sint Maarten. Employer associations and labor unions have insufficiently been involved in policymaking. The implementation of reforms in the labor market and the social security system requires involvement and support by social partners.

The past has shown that there can be successful social dialogue on Sint Maarten, and that this can lead to agreements on far-reaching reforms. The report 'Flexicurity for Sint Maarten' from 2014 by the SER and the 'Consensus document' from 2016 by the tripartite committee are striking examples.

2.1.3 Underinvestment in human capital

There is broad sense that human capital investment in Sint Maarten are inadequate. This concerns investments through the formal education system, adult training programs, and on-the-job learning. The scope for improvement concerns both the amount and quality of human capital investment. Higher investment would improve the matching between the required skills in the labor market and labor supply. In particular, the education and skills of school leavers, Financial Assistance recipients and long-term unemployed workers lags behind, leading to poor labor market prospects.

The ageing population of Sint Maarten strengthens the case for more and better investment in human capital. As working lives are extended - in particular in relation to a higher AOV age - the return on investment in human capital also increases. Therefore investments in schooling and the prevention of sickness and disability become more rewarding. On the other hand, if no such investments are made then it will be difficult to extend working lives in a healthy and productive manner.

2.1.4 Lack of information

Employees are often not aware of their rights and obligations with regard to the labor market and social security. Legislation is not easily accessible, fragmented, complex and sometimes only available in the Dutch language. Labor unions normally play an important role in informing employees about their rights and obligations. In Sint Maarten however, approximately 15 percent of the employees is affiliated with a union.

According to labor unions and employers' organizations, the government does little to provide information about the rights and obligations of employees and employers.

Effective implementation of labor market and social security reforms requires accurate data to monitor developments during the course of the implementation process.

2.2 Specific problems in the functioning of the labor market and the social security system

2.2.1 Employee risk: unemployment, temporary agency workers and disability

The social security system hardly provides effective insurance against the loss of income in the event of unemployment. Income and labor uncertainties for households are however significant, as the economy of Sint Maarten is highly susceptible to external shocks. The economy is not diversified, and mainly relies on tourism. As a result, macroeconomic shocks are exceptionally large. After Hurricane Irma, the unemployment rate increased from 6 to 10 percent in just one year, and after the start of the Covid-19 pandemic in 2019 it doubled in one year, from 9 to 19 percent.

The incentive for employers and employees to prevent sickness and disability is weak. This induces underinvestment in the prevention of sickness and disability, and leaves the concerning risks with the employee and society as a whole.

The market for private employment agencies does not function optimally. There are persistent signals of agencies that do not comply with the applicable regulations, which concerns exceedance of the maximum detachment period of twelve months, salary payment below the minimum wage, and the employment of undocumented workers. There is also a lack of clarity about the working conditions of temporary agency workers. The National Ordinance on the provision of workers mainly deals with permits for private employment agencies and does not provide sufficient protection for temporary agency workers. In order to prevent proliferation and exploitation, the regulations on temporary agency work should be revised.

2.2.2 AOV financially not sustainable in relation to demography

The ageing population of Sint Maarten will increase pressure on the financial sustainability of AOV. In the near future, AOV fund reserves will be needed to cover deficits. The World Bank projects that the AOV fund will spend more than it generates by 2031 and that the fund will be depleted by 2042.

Sint Maarten still has a young population compared to other countries in the region, but this will change in the coming decades. The current old-age dependency ratio is about half the size of the ratio in Curaçao and Aruba. Currently, there are 6 persons in the working-age population for every senior citizen above age 65. According to the demographic projection, this ratio will be 2 to 1 in 2050.

The increasing life expectancy will bring Sint Maarten's demography more in line with other countries in the region, and lead to substantial financial pressure on the AOV fund, the entire social security system, and Sint Maarten's public finances in general. If no action is taken in the coming years, then more rigorous policies will be needed in the future to achieve financial sustainability.

The accumulated reserves of the ZV, OV and FZOG funds have been negative for several years. The other funds, currently have sufficient reserves to compensate for those negative reserves. However, this will change for the AOV by 2031. As the country of Sint Maarten is responsible for the solvency of the SZV as a whole, it is projected that the SZV will require subsidies as large as 3 percent of GDP annually in 2030 and thereafter.

2.2.3 Inefficient procedures (foreign workers and dismissal)

Sint Maarten has an open economy that relies heavily on tourism. At the same time, the labor market is small and has limited capacity to absorb fluctuations and to provide specific and specialist skills. Foreign workers are important to accommodate the seasonal economy and the lack of specialized skills.

Procedures for attracting foreign workers are considered as one of the main distortions in the labor market and in the business climate in general. The procedure is experienced bureaucratic, non-transparent, lengthy and with uncertain outcomes, although improvements have been made recently.

Part of the problem stems from the fictitious negative decision ('fictieve weigering') with respect to both the work permit and the residence permit, leaving the applicant employer (and employee) in a weak legal position vis-à-vis the granting authority. If an administrative body such as the Ministry of VSA or the Immigration Office does not meet a reasonable or legal term, the interested (employer/employee) permit applicant must assume that the permit has been denied. For such fictitious refusals, a term of six weeks applies within which an objection must be lodged. If the fictitious refusal does not apply in the event of failing primary decisions, the law does not attach any consequences for the government or the administrative body for the failure to take a decision or for not taking it in a timely manner (decision). The only option that permit applicants have in that situation is to go to a civil court and request a decision about the reasonableness or unreasonableness of the time limits. This leads to a situation in which entrepreneurs often await their applications resigned and with uncertainty about the duration and outcome or even refrain from applying for permits altogether; government services and civil servants are insufficiently accountable for an orderly permit granting process; employers sometimes work around existing procedures, rely on their relationships with (senior) officials and ministers to expedite processes, or operate without a permit; room is created for official arbitrariness, nepotism and corruption.

Involuntary dismissal of employees requires permission by the Ministry of VSA. The procedure is considered complex - and the duration uncertain - and although the data show otherwise (in the years 2019-2021 39 percent of dismissal requests were granted, 34 percent denied and 27 percent settled in mutual agreement and suspended), the perception of employers is that the Ministry of VSA often decides in favor of the employee. In general, no substantial bottlenecks have been observed in the dismissal legislation itself, however, it may require adjustments to improve dismissal procedures.

2.2.4 Poverty

Poverty is an important social problem in Sint Maarten. Many households are not able to fulfill their basic needs and are still suffering from the consequences of hurricanes Irma and Maria and the Covid-19 pandemic. Poverty is often associated with reinforcing problems, such as disabilities, limited education, addiction, and family problems.

The social security system is not sufficiently effective in preventing poverty. In 2018, 5 percent of households had no income, and 14 percent of households had an income of less than ANG 1,000. About one quarter of all households has an income below 80 percent of the minimum wage. Financial Assistance nor retirement income suffices for many households. Financial Assistance typically ranges between ANG 734 and 1,200, depending on the number of parents and children in the household. AOV benefits are (at most) ANG 1,240 per month.

An estimated 75 percent of the elderly have an incomplete AOV, because they have not been registered on the island for a full period or have worked for an employer that did not pay contributions. Many have no alternative resources, such as AOV from another country. There is currently no explicit legal basis for the provision of Financial Assistance to pensioners with incomplete AOV benefits. Some of them however do receive complementary Financial Assistance for humanitarian reasons.

The minimum wage is not considered sufficient to protect the lower end of the labor market. In a full-time job, the minimum wage equals ANG 1,725 on a monthly basis. However, it has been estimated earlier that at least 29 percent of workers earn less than the minimum wage.

Automatic indexation of Financial Assistance, AOV, and the minimum wage does not take place, leading to a significant decline in purchasing power of low income households over time and, consequently, increased poverty.

The social security system is not sufficiently effective in helping and stimulating persons with low earnings capacity to find their way to the formal labor market. Recipients of Financial Assistance are financially discouraged to perform paid work in the formal labor market. An increase in the number of hours worked is often fully nullified by lower Financial Assistance. This not only discourages Financial Assistance recipients to perform paid work, but also stimulates them to participate in the informal economy, as the benefit level is not sufficient for many households.

3 An integrated package of reforms

Improvements and reforms contribute to a better functioning of the labor market and the economy, the fight against poverty, greater income security and sustainable public finances. They have been tested for economic, financial and social viability and sustainability.

3.1 Introduction

Improvements and reforms of the labor market should be in balance with improvement and reform of social security and vice versa. For example, dynamism in the labor market must be accompanied by a fair and effective social security system. The following improvements and reforms of the labor market and social security should be considered as one coherent and balanced Program 'Strengthening Social Security and Labor Market Sint Maarten'.

The improvements and reforms that are proposed are aimed at an improved social safety net and have been tested for economic, financial and social viability and sustainability. The improvements and reforms contribute to a better functioning of the labor market and the economy, the fight against poverty, greater income security and sustainable public finances.

All steps taken in the labor market and social security assessments - the analysis of bottlenecks and gaps, the design of the reforms, the financial impact and the feasibility - have been discussed and tested with social partners, stakeholders and experts.

3.2 Unemployment, temporary agency workers, sickness and disability

3.2.1 Unemployment benefit scheme

An unemployment benefit scheme helps workers, households and the Sint Maarten economy as a whole. It increases the resilience of households and the economy against external shocks, such as hurricanes and pandemics. With an unemployment benefit scheme in place, there is a legal and financial infrastructure, and an implementation structure, to mitigate the socio-economic consequences of shocks with heavy economic impact. An unemployment benefit scheme provides insurance for workers and households against the loss of income in case of unemployment and helps stabilizing the macro-economy. In addition, allowing unemployed workers some 'search time' to find a job contributes to a better match between supply and demand in the labor market.

The unemployment benefit scheme should however not be made too generous in order to maintain incentives to accept paid work. In particular, long-term unemployment should be prevented, as it leads to an accelerated depreciation of human capital. A limited maximum duration stimulates unemployed workers to timely accept paid work.

An initial unemployment benefit scheme could have a maximum duration of 3 months, a replacement rate of 70 percent of gross wages, a maximum amount of unemployment benefits of ANG 2,100 per month, and a reference requirement of 9 months. The latter means that an unemployed worker should have been employed for at least 9 months within the previous two years in order to qualify for unemployment benefits. Alternative, and perhaps more generous, parametrizations can be considered once the unemployment benefit scheme has been introduced and the first experiences have been evaluated. Note that an extension of the maximum duration of unemployment benefits is possible on an ad hoc basis, once the scheme is implemented. In the US, this is common practice, with temporary extensions of the maximum duration in case of 'emergencies'. This policy is less costly than a continued maximum duration of longer than 3 months.

The severance payment part of Cessantia can be abolished once the unemployment benefit scheme is in place. This way, the additional costs for employers of an unemployment scheme can be contained, and will be in the order of 0.5 percent of the wage bill. In the short run, the additional costs for employers may be higher - up to 1.9 percent of the wage bill - in case the abolishment of the severance payment part of Cessantia requires a transitional period (see section 3.2.2).

The premium can either be set at a uniform rate for all employers, or be differentiated according to use. The second option stimulates the prevention of excessive layoffs and avoids the implicit subsidization of seasonal work through the unemployment benefit scheme. Premium differentiation incentivizes employers to invest in the employability of workers, strengthen their human capital, and lower their risks of becoming unemployed. Of course, not all unemployment risk can be prevented, as it is for an important part dependent on external circumstances. This 'basic' unemployment risk should not be relevant for the differentiated part of the unemployment benefit premium. For many countries, this tradeoff between ease of implementation and strength of incentives has led to a choice for differentiated premiums. For Sint Maarten however, with its relatively small scale, it is recommended to start with a uniform premium. Once the scheme has been implemented, a next step towards differentiated premiums can be considered. Once SZV has collected information about the actual use of unemployment benefits, it could start differentiating premiums for employers. The differentiation formula should be laid down in the law.

Finally, the new unemployment benefit scheme should be linked to a skills training program. This would require a moderate increase in the premium. The program could especially aim at lower educated youth, and improve their labor-market readiness. An organization with similar characteristics as ROC in the Netherlands could supply training programs, in close coordination with employers. A second source of inspiration are the lifelong learning programs in Barbados.

3.2.2 Temporary agency workers

A framework will have to be developed based on the specific situation in Sint Maarten, which should not be too complex and yet effective. Agency workers should be treated equally to other employees in terms of pay for comparable work, they should get access to social security, and in addition, it is important that a temporary worker acquires the right to enter into permanent employment with the employment agency after a certain period of temporary employment (i.e. with continued payment of wages, even if there is no work). On the other hand, not too many restrictions should be placed on temporary employment agencies that are functioning well at the moment. Ultimately, Sint Maarten benefits from a well-functioning and bona fide temporary employment agency sector.

3.2.3 Cessantia

Replacing the Cessantia scheme with an unemployment benefit scheme ensures a more efficient functioning of the labor market, better matching between supply and demand, and better flows between different jobs. This is beneficial for the economy, and has positive effects on wages and government finances. In the new unemployment benefit scheme, employee rights are related to general labor market experience, whereas in the Cessantia scheme these rights were related to tenure with the current employer. Therefore, with Cessantia workers who change jobs receive a financial penalty in their accrued rights. This discouragement of changing jobs is removed with the replacement of Cessantia by an unemployment benefit scheme.

With the introduction of an unemployment benefit scheme, the bankruptcy part of Cessantia can be abolished. This implies savings for employers, as employers currently pay a premium to SZV. The existing Cessantia fund can serve as seed capital for the unemployment benefit fund.

In addition, abolishing Cessantia will result to structural savings for employers on severance payments. If a broad interpretation of the Cessantia rights that employees have upon termination of the employment contract is taken into account, a substantial latent claim against employers will lapse. However, a transitional arrangement may be necessary to compensate employees' accrued rights, if it were to be decided to discontinue Cessantia. The accrued rights can be transferred to a transitory fund. This way, employees can be compensated for their accrued rights. These accrued Cessantia rights are now often paid out after retirement.

3.2.4 Sickness and disability

Stimulating a preventive sick leave policy by means of a financial incentive for employers (extension of the continued payment of wages) is desirable. There are reservations however about the extension of the continued payment of wages in a new disability scheme, because it is expected that employees could become victims of this. If employers do not adhere to the new policy of extended wage payments, then the employees are left without any income. Effective enforcement is therefore a necessary condition for the new policy to be successful. In addition, significant effects for small employers must be taken into account. Prevention of sickness is not solely a responsibility of employers; employees also have their responsibility in prevention.

The reform of the ZV and OV into one disability scheme puts a heavy burden on the implementation (SZV). Implementation in the short or medium term cannot be expected due to the complexity, the burden on SZV, the required improvements in enforcement, and priority of the other reform proposals.

It is therefore recommended to start with applying a differentiated premium for the continued payment of wages of the ZV and OV, in such a way that employers are effectively stimulated to prevent sick leave.

3.3 Pensions

3.3.1 AOV eligibility age

The financial sustainability of the social security system is secured by indexing the AOV eligibility age to life expectancy. The effectiveness of this policy is sufficient to cover the growing expenses of the ageing population and to reach a sustainable path of the AOV fund. This policy will save on AOV expenditures on the one hand, and increase

tax and premium revenues on the other hand as workers will retire at a higher age. Indexing the AOV eligibility age to life expectancy is equitable from an intergenerational perspective.

Alternative policy options to cover higher future AOV expenditures are not sufficient in the longer run. In 2050, there will be one AOV recipient for every two persons in the working-age population if the AOV eligibility age is kept at 65. Maintaining the AOV eligibility age at 65 would only be feasible if the AOV premium is dramatically increased, or AOV benefits are dramatically decreased. These options are both unattractive and unrealistic.

A slow and gradual increase in the AOV eligibility age by means of tying it to life expectancy has significant advantages. Workers and employers are given time to prepare themselves and get used to longer working lifetimes. Given the demographic and financial situation, Sint Maarten has the opportunity to implement a steady and gradual increase of the AOV age, if this policy is started within reasonable time. The technical details of this indexation need to be worked out in the coming years and laid down in a law. Inspiration can be drawn from many countries which have already introduced an indexation of the AOV eligibility age to life expectancy, such as Denmark, Finland, Greece, Italy, and the Netherlands.

In Sint Maarten, specific attention should be paid to the operational definition of life expectancy. International cooperation with other countries, preferably in the region is advised. A practical possibility is to rely on international demographic projections of the United Nations.¹ According to these projections, the life expectancy in Sint Maarten of persons having reached the age of 65 is 76 years in 2023, and this will increase to 79.5 years in 2050. Full indexation of the AOV age to remaining life expectancy would thus lead to an AOV eligibility age of 68.5 years in 2050. This is equivalent to raising the AOV age by seven months every five years, starting in 2025. So the first step would be to raise the AOV age to 65 years and seven months in 2025, to 66 years and 2 months in 2030, 66 years and 9 months in 2035, et cetera.

To accommodate the additional supply of labor, complementary labor market policies should be developed. These policies should aim at a healthy and productive older workforce. The government, employers, and workers should each play their role. The government should inform workers and employers, financially educate them, and help them to make retirement decisions which are in their own interest. The government should also promote healthy working conditions and stimulate schooling, so that workers remain productive until their retirement. In the short run, there may arise some labor market frictions with older workers on permanent contracts who cannot be replaced by young workers. This may lead to some short-run mismatches in the labor market. However, there is ample international evidence that a higher AOV eligibility age is no reason for concern about youth unemployment. A second problem that may arise in the short run is that older workers having performed physical labor are hardly able to extend their working lives for health reasons. However, this problem is limited because the current older workers will only face a limited increase in the AOV eligibility age, and the future older workers and their employers do have the time to adjust. Moreover, older workers remain insured for sickness and disability. For the younger cohorts, social partners should develop labor careers where physical labor is limited, say, until the age of 45, after which these workers pursue their careers in less physically demanding jobs. It is important to develop lifelong learning policies and suitable career paths, especially for workers with lower education degrees.

¹ See population.un.org.

Finally, participation in occupational pensions should be stimulated. Pension savings already receive a favorable tax treatment, but the current take-up outside the public sector is low. In the longer run, more pension savings will also help to combat poverty at old-age and prevent significant drops in household income after retirement. It should be considered to facilitate private companies and workers to build up their second-pillar pensions at APS. This could be a solution for some firms and workers. It would however require additional legislation.

3.3.2 Financial assistance to elderly

Complementary to raising the AOV eligibility age, Financial Assistance for senior citizens with incomplete AOV should be formalized. This group faces poverty risks and the current practice is legally incomplete. Financial means for the additional expenditures are indirectly created by the higher AOV eligibility age, so the two complementary policies should be tied together in the lawmaking process. In order to contain the additional expenditures, Financial Assistance for elderly should be restricted to residents of Sint Maarten. In particular, illegal exports should be prevented.

3.4 Foreign workers

The economy of Sint Maarten, and its future development, is strongly dependent on (hiring temporary) foreign workers. To that end, foreign workers do not pose a threat to the local working population, but contribute to economic development and job creation. The recommendation is improve the procedure for hiring foreign workers; not to make Sint Maarten more open to the inflow of foreign workers. To improve the procedure, it is essential to strengthen the legal position of the employer/employee as a permit applicant on the one hand, and the accountability of the issuing authority on the other. A permit by operation of law, a fictitious positive decision, as a default as a result of a permit decision that was taken too late or not taken instead of a fictitious negative decision, is considered a major step forward towards strengthening the position of the permit applicant and strengthening the accountability of the issuing authority. For this to work properly, and to avoid the risk of abuse, it is required that the responsible authorities are sufficiently equipped (manpower, administrative organization) to meet the decision deadlines. If that is not the case, then there is a real risk of abuse and these solutions may be undesirable. Mitigating this risk is of importance in the light of possible exploitation of foreign workers, about which there are signals in Sint Maarten.

Legal remedies that potentially strengthen the applicants' position with regard to permit applications are the following, where remedies 2 and 3 are less far-reaching than remedy 1:

1. fatal terms, also known as 'lex silencio positivo', 'positive fictitious decision' or 'permit by operation of law'. After the expiry of the statutory decision period, the permit is deemed to have been granted by operation of law. A decision is no longer necessary.²
2. assimilation with decision; in this case, after the expiry of the decision period, the application has not been granted, as under (1), but the applicant does have the right to object and appeal, as if a negative decision had been taken.
3. penalty in case of late decision, a financial incentive, included in the relevant statutory regulation, which is automatically granted without the intervention of the court, but after notice of default by the provider after the expiry of the decision period.

² A potential risk stemming from the introduction of fatal terms is that the responsible government agencies tend to reject more quickly in order to avoid fictitious allocations. It is therefore important to monitor (grounds for) rejections.

These remedies can help improving the procedure for both residence and work permits and contribute to speeding up the application and issuing of permits, increase legal certainty for employers and employees, and contribute to better government accountability. A precondition for these remedies to be effective and to prevent unintended effects to arise, is that the permit granting authority has sufficient capacity (people, ict) to carry out the tasks efficiently within the defined time-frames.

It is recommended to amend the applicable guidelines of the Minister of Justice and include a 30-day period as the reasonable period for deciding upon applications for residence permits. For complex cases, extension should be possible. In addition, it is recommended to change the fictitious negative decision into a fictitious positive decision: in case the immigration does not decide within the reasonable period of 30 days, and provided that the applicant has submitted an application that meets all requirements, the permit is granted.

One of the inefficiencies in the current procedure is that decisions on work- and resident permits are taken by ministers (VSA and Justice). Permit decisions often await approval (or disapproval) by the minister. It is advised to mandate SG's/directors to make these decisions in order to accelerate the permit process.

The procedures for applying for and granting of work permits and residence permits (by the Section Labor Permits and IND) should be coordinated and integrated where possible. To this end, conclusive agreements should be made between the departments responsible for implementing the relevant legislation, starting with the ministers responsible for the relevant areas of policy (labor market and immigration). Legislation also needs to be amended accordingly.

A specific regime may be required for (vacancies for) critical jobs, such as medical doctors, technicians, ict-experts, etc. In those cases, it should be possible to apply an accelerated procedure that enable attracting a foreign workers within days rather than months. It is recommended not to direct such accelerated procedures to predetermined professions or sectors as government failure is lurking here; economic dynamics may cause labor market needs to change quickly and the government responds to these changes with too much delay. Accelerated procedures should focus on acute needs, irrespective of profession or sector, which can be assessed ex ante in an accelerated manner against predetermined criteria.

3.5 Dismissal

The SER has previously issued advice regarding amendments to the dismissal law. Central to this advice is the retrospective assessment of dismissals, carried out by a Dismissal Assessment and Arbitration Board (DAAB) that includes representatives of employers and employees. Caution must be exercised in this regard, because of the general principles of law such as the principle of prudence, the obligation to state reasons, the principle of legal certainty, the principle of legitimate expectations and the principle of equality.

The long duration of dismissal procedures is considered a problem. A faster dismissal procedure can be enforced by stricter application of the regulations (no decisions based on subjective arguments), more frequent meetings of the dismissal committee, having meetings always go ahead (appointing multiple substitutes) and more generally respecting formal response times.

The existing dismissal law of Sint Maarten may require adjustments to improve dismissal procedures. In general, no substantial bottlenecks have been observed in the dismissal legislation. An assessment by a legal expert in this field is advised to examine the existing legislation and procedure with the central question of how the dismissal procedure can be improved such that the legal positions of employers and employees remain balanced. The recommended assessment should result in concrete changes based on an analysis of the regulatory framework relevant to dismissal (dismissal law, Civil Code, etc.). Part of this assessment should be the substitution of Cessantia and the 'kantonrechtersformule' by a transitional payment from the employer to the employee in case of dismissal.

3.6 Poverty

3.6.1 Automatic indexation

The minimum wage, Financial Assistance and AOV benefits should all be automatically indexed to the Consumer Price Index (CPI). Automatic indexation to CPI should be laid down in the law, with an effective (operational) definition of CPI and a clause for special circumstances that may lead the responsible minister to make a motivated decision not to index. By automatic indexation, households living at the minimum can maintain their purchasing power. The indexation should take place annually or semi-annually. In case of emergency, the minister can decide to apply a lower or higher indexation. In that case, parliament will have to approve this decision and consider whether there is a true 'emergency'. A lower indexation could be relevant in times of financial distress for government, whereas a higher indexation could be relevant in times where the lowest income households are unevenly affected by price changes (e.g. energy prices).

3.6.2 Incentives to work

Financial assistance should include stronger incentives for recipients to accept paid work, as this is often the most effective way out of poverty. The method of calculation needs to be changed, in any event for reasons of clarity. By using the minimum wage as the standard amount, instead of the SZV-related standard amount, a downward correction is no longer necessary. If 60 percent of additional labor income is set-off against Financial Assistance benefits, instead of 100 percent, then it is more rewarding to perform paid work.

VSA is currently experimenting with re-integration incentives in Financial Assistance. A proper evaluation should take place, and the lessons learned should be used to strengthen the design of work incentives for Financial Assistance recipients.

3.7 Financial effects

The integrated package of policy reforms imply a net improvement in public finances (government and SZV), and neutrality or a slight increase in employer expenses. Raising the AOV eligibility age is by far the most significant reform in financial terms. As a result of the total package of reforms, public finances (government and SZV) will structurally improve in the long term by a minimum of ANG 50 and a maximum of ANG 130 million per annum. The precise path towards these long term effects – and the extent to which savings can be realized in the medium and short term – is dependent on policy decisions to be made. Net employer expenses will remain neutral in case the unemployment scheme has a maximum duration of three months, and increase by at most ANG 16 million per

annum in case the maximum duration of the unemployment scheme is 9 months. In addition, employers benefit from more stable consumer demand and a less volatile economy.

4 Implementation

For a successful implementation, it is essential that social partners and stakeholders play a role in the entire process, that a programmatic and project-based implementation is followed, and that a governance structure is installed which coordinates the implementation, support, steering, monitoring, and reporting.

4.1 Conditions

Social security and the labor market are among the most complex areas for reform. First, there is tension between the need for a better social safety net and the need to improve the financial sustainability of the social security system. Secondly, there is the perception of conflicting (partial) interests between different groups in society that are affected by reforms in social security and the labor market. And finally, there is no quick fix: when reforming social security and the labor market, a long-term perspective is essential, in which decisions sometimes have to be made now in order to achieve the desired long-term effects. Reforming social security and the labor market therefore requires commitment and active involvement from the government and the social partners.

The package of reforms as proposed in the previous chapter contains no surprises. Many reforms build on proposals that have been made in the past by various organizations in Sint Maarten and by international institutions, but of which the implementation has not got off the ground. The reforms proposed in this report stem from an assessment of the current state of the labor market and the social security system. All the steps taken towards this reform package – the analysis of bottlenecks and gaps in the labor market and the social security system, the design of the reforms, the financial impact and the feasibility – have been discussed and tested with social partners, stakeholders and experts. The conclusion is that the package of reforms is generally seen as a logical and coherent package and that it is understood.

All this is a necessary, but not yet sufficient, condition for successful implementation. It is of primary importance that the social partners and stakeholders play a role in the entire implementation process. Social security reform is a complex and sensitive issue and individual reforms and measures may encounter resistance from various stakeholders. It is therefore important to involve social partners and other stakeholders at an early stage, to build and maintain consensus, and to ensure that their concerns and wishes are taken into account. Stakeholder involvement involves more than just informing decisions and plans. Social partners and stakeholders must be involved in preparing decision-making, technical elaboration of reforms, implementation, communication and monitoring. The package of proposed reforms contains numerous choices that Sint Maarten still has to make, and numerous proposals that need to be worked out in more detail. For successful implementation it is essential that the government of Sint Maarten involves the social partners and other stakeholders in all these steps.

There is a fundamental and wide concern in Sint Maarten that the proposed improvements will not be implemented. In particular, the social partners and stakeholders have expressed deep concerns about the implementation strength, the political determination and will, and the involvement and commitment of the Netherlands. In their view, implementation of the proposed reforms can only succeed if a structure is set up to ensure an effective process. According to social partners, the need for such a structure has become stronger now that the involvement of the Netherlands has changed. They view as essential preconditions for such a structure: sufficient distance of the day-

to-day implementation process (and related decision-making) from politics, a clear mandate when it comes to decisions, and powers with regard to the implementation process. The social partners have suggested a 'governance committee' consisting of independent experts, representatives on behalf of the social partners and representatives on behalf of the government. This committee should have a strong mandate and the necessary powers to complete the implementation task.

4.2 Time schedule

The reforms of the social security system and the labor market as proposed in this report constitute the priority program resulting from the separate studies carried out in both areas. As such, all improvements and reforms included in this package qualify as priority.

The following table presents the indicative time schedule for the implementation process. In this timetable, the second half of 2023 is used to create the necessary conditions and make preparations for the implementation process. This concerns the appointment of a program manager, the adoption of the priority program by the Council of Ministers, the initiation and implementation of the communication plan, the conference with social partners and stakeholders, and the organization and setting up of the governance structure.

It is envisaged that implementation of the proposed priority program can be achieved in a period of two years, provided that the necessary priority is assigned to it within the country package and that capacity, knowledge and resources are made available for it.

	2023		2024				2025			
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Preparations and conditions										
Appoint program manager for implementation process										
Decision on reform package by Council of Ministers										
Communication plan										
Conference with social partners and stakeholders										
Structure role of social partners and implement governance structure										
Improvements and reforms										
Introduce an unemployment benefit scheme										
Abolish Cessantia, while maintaining severance pay										
Differentiate ZV and OV employer premiums in order to stimulate sickness prevention										
Automatically index the AOV eligibility age to life expectancy										
Formalize financial assistance for elderly with an incomplete AOV										
Streamline and fasten work and residence permit procedures										
Streamline and fasten dismissal procedures										
Automatically index the minimum wage, Financial Assistance (FA), and AOV benefits to inflation (CPI)										
Strengthen incentives for FA recipients to accept paid work										

A number of improvements can be realized in the short term. This concerns the indexation of the AOV eligibility age to life expectancy, formalization of financial assistance for the elderly, and automatic indexation of the minimum wage, the AOV and financial assistance. These improvements require some technical preparations and small amendments of the respective legislations.

One to one and a half years is provided for the implementation of the differentiation of the ZV and OV premiums, streamlining the procedures for work and residence permits, and strengthening the policy to get welfare recipients to work. These improvements require both legal adjustments and organizational changes.

While preparations for the unemployment scheme can start in the short term, two years are foreseen for the entire implementation. After all, the introduction of the unemployment scheme requires the introduction of a new law with an associated legislative process. In addition, the executive process must be set up at the SZV in order to be able to implement the scheme.

4.3 Governance

The reforms proposed in the previous chapter constitute the program 'Labor Market and Social Security Modernization', which can be implemented between 2023 and mid-2025. A programmatic and project-based approach to these reforms is an important condition for effective implementation of the proposed reforms. In addition, it is essential that there is a governance structure that makes it clear to all organizations and persons involved in the implementation how responsibilities for implementation, support, steering, monitoring, reporting, commissioning, escalation and ultimate responsibility are organized and with whom they are held. Without such an implementation and governance structure, projects will become out of step, sub-goals will become leading instead of the main goal, accountability will fall short and the chances of successful implementation of the program as a whole will be small.

The reform of the labor market and social security is part of the country package of Sint Maarten and of the implementation agendas that Sint Maarten and the Netherlands have agreed in that regard. The ultimate political responsibility therefore rests with the Prime Minister of Sint Maarten and the State Secretary for the Interior and Kingdom Relations of the Netherlands. In case of problems in the progress of the program, they serve as the highest escalation platform.

The Council of Ministers of Sint Maarten needs to establish the program and mandate the Minister of VSA as the politically responsible minister of the program. This implies that all officials and organizations involved in the implementation of the program and of the individual projects work on behalf of the minister of VSA. Other ministers do not intervene in commissioning, management or implementation. This requires a concrete, clear formulation of the mandate that has been established in the Council of Ministers and to which the full cabinet commits.

A committee for implementation of the program needs to be installed that operates under the instructing minister of VSA. In establishing this committee, it is recommended to take into account the concerns expressed and suggestions made by the social partners. To that end, it is recommended to establish a committee that consists of independent experts, representatives on behalf of the social partners and representatives on behalf of the government. This committee should have a strong mandate and the necessary powers to complete the implementation task.

The Temporary Working Organization will play an important role in monitoring and facilitating the implementation process. In addition, the Ministry of Social Affairs and Employment of The Netherlands, and possibly other organizations from The Netherlands, will provide expertise and assistance during the entire process of implementation.

With the implementation of this program, the civil service of Sint Maarten, in particular the Ministry of VSA, the SZV and the other organizations involved, will have a significant additional task for a longer period of time. It is therefore important that the committee receives adequate support. This support may consist of a program manager to be appointed, who is responsible for the day-to-day management of activities, the preparation of decision-making by the committee, the reports, the agendas, and ensuring the information flows.³

The implementation is organized in project teams that work on the different substantive parts of the program such that implementation is clear and feasible (e.g. communication, legislation, social assistance, incapacity for work, unemployment, pensions). Project teams are staffed by expert employees from the organizations involved. The different projects require different forms of external support to make the implementation feasible, in particular legal capacity. Without additional, external capacity and expertise, implementation of the program will not get off the ground (in its proposed form).

³ It may be considered to appoint a program manager who simultaneously co-ordinates the reform processes in Curaçao, Aruba and Sint Maarten.



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