



General review recommendations Sint Maarten

Sub-inspection 5:

**Border control of the movement of persons;
Admission and expulsion of foreigners.**

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Admission and expulsion of foreigners.**

Client: Law Enforcement Council

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Table of Contents

| | |
|---|-----------|
| Table of Contents | 3 |
| List of abbreviations | 7 |
| Foreword | 8 |
| Summary | 9 |
| Introduction | 9 |
| 1. Introduction | 15 |
| 1.1 Rationale | 15 |
| 1.2 Central question and sub-questions | 16 |
| 1.3 Delimitation | 16 |
| 1.4 Assessment framework | 16 |
| 1.5 Approach to inspection | 18 |
| 1.6 Reading Guide | 18 |
| 2. Background information | 19 |
| Introduction | 19 |
| Reinforcement of border control 2017 | 20 |
| Two-day work conference 2018 | 20 |
| Cooperation and information 2019 | 20 |
| Strengthening of border control 2021 | 21 |
| Intelligence Center Sint Maarten (ICSM) | 21 |
| 3. State of affairs border control | 22 |
| 3.1 Border control of the movement of persons | 22 |
| Structure Chapter 3 | 22 |
| 3.2 Legal position decree IBPS | 22 |
| State of affairs 2017 | 22 |
| State of affairs 2024 | 22 |
| Assessment | 23 |
| 3.3 Employee Placement | 23 |
| State of affairs 2017 | 23 |
| Findings 2024 | 23 |
| Assessment | 24 |
| 3.4 Synchronisation mandating and decision-making practice | 24 |
| State of affairs 2017 | 24 |
| Findings 2024 | 24 |

| | |
|--|-----------|
| Assessment | 24 |
| 3.5 Synchronisation of Admission Decree and practice..... | 25 |
| State of affairs 2017 | 25 |
| Findings 2024 | 25 |
| Assessment | 25 |
| 3.6 Structural investments in ICT | 25 |
| State of affairs 2017 | 26 |
| Findings 2024 | 26 |
| Assessment | 26 |
| 3.7 Center access control of maritime traffic | 27 |
| State of affairs 2017 | 27 |
| Findings 2024 | 27 |
| Assessment | 27 |
| 3.8 Cooperation and exchange of information | 28 |
| State of affairs 2017 | 28 |
| Findings 2024 | 28 |
| Assessment | 29 |
| 3.9 Cooperation between the French authorities | 29 |
| State of affairs 2017 | 29 |
| Findings 2024 | 30 |
| Assessment | 30 |
| 3.10 Internal organisation IBPS | 31 |
| State of affairs 2017 | 31 |
| Findings 2024 | 32 |
| Assessment | 33 |
| 3.11 Training..... | 33 |
| State of affairs 2017 | 33 |
| Findings 2024 | 33 |
| Assessment | 35 |
| 3.12 Accountability of results and figures | 35 |
| State of affairs 2017 | 35 |
| Findings 2024 | 35 |
| Assessment | 36 |
| 3.13 Integrity policy | 36 |
| State of affairs 2017 | 36 |

| | |
|---|-------------------------------------|
| Findings 2024 | 36 |
| Review..... | Error! Bookmark not defined. |
| 3.14 (Schematic) overall analysis of border control of the movement of persons ... | 37 |
| Introduction..... | 37 |
| State of affairs Follow-up 2024..... | 38 |
| Recommendation and monitoring | 40 |
| 4. State of affairs admission and expulsion | 42 |
| 4.1 Admission and expulsion of foreigners in Sint Maarten..... | 42 |
| 4.2 Labour market studies, Labour market and admission policies and implementation of admission policies | 42 |
| State of affairs 2019..... | 42 |
| Findings 2024 | 42 |
| Assessment | 43 |
| 4.3 Admission policy | 43 |
| State of affairs 2019..... | 43 |
| Findings 2024 | 43 |
| Assessment | 44 |
| 4.4 Drafting and publication of policies | 44 |
| State of affairs 2019..... | 44 |
| Findings 2024 | 45 |
| Assessment | 45 |
| 4.5 Synchronisation of decision-making and expulsion with legislation and policy..... | 45 |
| State of affairs 2019..... | 46 |
| Findings 2024 | 46 |
| Assessment | 46 |
| 4.6 Education falsifications and building documents file..... | 47 |
| State of affairs 2019..... | 47 |
| Findings 2024 | 47 |
| Assessment | 48 |
| 4.7 (Schematic) Overall Analysis Admission and expulsion | 48 |
| Introduction..... | 48 |
| State of affairs Follow-up 2024..... | 49 |
| Recommendation and monitoring | 50 |
| 5. Overarching analysis | 52 |
| Annex 1: State of affairs recommendations per report | 56 |

List of abbreviations

| | |
|----------|---|
| ActBMS | Border Management System |
| ActFMS | Foreigner Registration System |
| ActPOL | Police Business Process System |
| BAVPOL | Extraordinary Police Officers (<i>Buitengewoon ambtenaar van politie</i>) |
| G&V | Border control & Immigration control (<i>Grensbewaking & Vreemdelingentoezicht</i>) |
| ICSM | Intelligence Center Sint Maarten |
| ICT | Information and Communication Technology |
| IND | Immigration and Naturalisation Service (<i>Immigratie en Naturalisatiedienst</i>) |
| IBPS | Immigration and Border Protection Services (<i>Immigratie- en Grensbewakingsdienst</i>) |
| IT | Information Technology |
| KMar | Royal Netherlands Marechaussee (<i>Koninklijke Marechaussee</i>) |
| KPSM | Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>) |
| LMA | National Ordinance Substantive Civil Servants Law (<i>Landsverordening Materieel Ambtenarenrecht</i>) |
| MOU | Memorandum of Understanding |
| OM | Public Prosecutor's Office (<i>Openbaar Ministerie</i>) |
| ORVK | Mutual arrangement Immigration Chain (<i>Onderlinge Regeling Vreemdelingen Keten</i>) |
| PAF | Police aux Frontières |
| PG | Attorney General (<i>Procureur Generaal</i>) |
| PJIA | Princess Juliana International Airport |
| Council | Law Enforcement Council (<i>Raad voor de rechtshandhaving</i>) |
| RADEXBCM | Border Control Management System |
| SOAB | Government Accountant Bureau (<i>Stichting Overheids Accountant Bureau</i>) |
| VSA | Ministry of Health, Social Development and Labour (<i>Ministerie van Volksgezondheid, Sociale ontwikkelingen en Arbeid</i>) |

Foreword

In 2020, the Law Enforcement Council (the Council) in Sint Maarten launched a general review of the implementation of Council recommendations from 2012 to 2018. In view of the large number of recommendations, sub-inspections have been carried out, each of which addresses several specific issues. The Council has so far published four sub-inspections.

Before you is the fifth sub-inspection. It assessed the extent to which the recommendations on two issues concerning the Immigration and Border Protection Service, namely border control of the movement of persons and the admission and expulsion of foreigners in Sint Maarten, have been followed.

Border protection and control on the movement of persons are of great importance for law enforcement in Sint Maarten. The inspection shows that more than half of the recommendations have not been followed or have been partially followed. These include plans, policies, legal framework, enforcement & compliance, and research.

The Council notes that the follow-up and implementation of the recommendations which have not been (fully) followed up have been delayed for almost 10 years. The Council therefore expects that this inspection will now lead to the follow up of these recommendations by the Minister of Justice, with the utmost urgency. This is in view of the social importance they represent. The Council will continue to monitor the progress of recommendations to be followed on a regular basis.

As in previous inspections of the Law Enforcement Council, the organisations and individuals concerned cooperated constructively in the inspection. The Law Enforcement Council once again thanks the persons approached for their cooperation.

THE LAW ENFORCEMENT COUNCIL

Mr. M.R. Clarinda, Councilmember
Mr. E.R.A. Morillo, Councilmember
Mr. M.I. Koelewijn, Councilmember

Summary

Introduction

In 2020, the Law Enforcement Council (the Council) started a general inspection in Sint Maarten into the status of all recommendations that the Council made to the Minister of Justice from 2012 to 2018. In view of the large number of recommendations made by the Council so far, the Council carried out sub-inspections, each of which deals with a number of specific topics. The Council has already published four sub-inspections.

This report is the fifth sub-inspection. In this context, the Council conducted a second review in response to the previous reports on border control of the movement of persons in Sint Maarten (2014¹ and 2017²) and admission and expulsion of foreigners in Sint Maarten (2014³ and 2019⁴). The previous reviews showed that not all recommendations had been followed.

In this second review, the Council assesses the state of affairs regarding the follow-up of the partial and not yet followed recommendations from the 2017 report (review border control) and 2019 (review admission and expulsion). The status regarding the follow-up of the recommendations is presented below.

Border control of the movement of persons

In 2014, the Council published a report in which it looked at how border control of the movement of persons takes place in Sint Maarten. In that report, the Council made fourteen recommendations for improving border controls on the movement of persons. Subsequently, in 2017, the Council carried out a review to assess the extent to which the recommendations made in 2014 had been followed up.

That inspection showed that of the fourteen recommendations, five recommendations had been partially and two fully followed. Seven recommendations had not been followed up. As a result of the 2017 review, the Council therefore made one recommendation to follow up on the (twelve) recommendations that have not yet been (fully) addressed and made six new recommendations. The *compliance* rate at the time was 32.1%.

In 2010, the Immigration and Border Protection Services (IBPS) was assigned the tasks with regard to border control of the movement of persons and the control of foreigners in Sint Maarten. In 2016, these tasks were transferred to the police force of Sint Maarten (KPSM), only to be transferred back to the IBPS in 2021. As a result of this latest change, this underlying inspection has viewed the new situation from the IBPS's perspective, or its recommendations have been disregarded. This has had consequences for a number of recommendations from the inspection in 2017, bringing the total number of recommendations in the underlying review to sixteen in 2024.

The state of affairs in 2024, based on the remaining recommendations, is that four recommendations have been followed, six recommendations have been partially followed and six recommendations have not been followed up. The four recommendations that have been addressed relate to the centralisation of access control for maritime traffic (1), the operational status of the border control system ActBMS (1) and the cooperation and exchange of information between the countries and services involved in border control and immigration control (2).

Partially followed up

¹ Border control on movement of persons in Sint. Maarten, 2014.

² Border control on the movement of persons in Sint Maarten, A follow-up inspection , 2017.

³ Sint Maarten Welcomes you, 2014.

⁴ Follow-up inspection on the implementation of the recommendations regarding the admission and expulsion of foreigners in Sint Maarten, 2019.

The six recommendations, which have been partially followed, concern the following topics: Mandate (1), cooperation with French authorities (2), a border management system (1) and training (2).

The mandate and decision-making practice regarding refusal of admission, despite the repeal of the old decree, is still not synchronised due to the lack of a new mandate decree. Improving cooperation with the French authorities in the field of border control and immigration control is being actively pursued but is complex.

Capacity problems and the lack of an updated cooperation protocol⁵ between France and the Kingdom are major obstacles. A start has been made with the installation of a new border management system. However, before the new system is operational at all land and seaport border control points, there is still a lot to be done.

Despite the necessary investments and efforts in recent years, the training process is currently stagnated. The structural availability of resources and opportunities for training remains important.

Not followed up

The six recommendations that have not been followed concern the following topics: Legal Status Decree (1), placement of employees (1), internal communication/transparency (1), integrity policy (1), accountability (1) and synchronisation of admission decision/practice (1).

There is no specific legal status decree for the IBPS. The placement of IBPS employees takes place on the basis of different legal status decrees. This creates a lot of uncertainty. Communication and information exchange between management and employees has not improved structurally. The personnel policy is not transparent and unclear to the employees.

There is no consistent and transparent integrity policy in place. Due to the many changes in management in recent years, the accountability structure of the IBPS has not improved. The Admission Decree has still not been updated and brought into line with current practice.

Compliance percentage

The *compliance* rate is 40.6%. The inspection shows that there has been a small improvement in the level of follow-up of the recommendations, given that the *compliance* rate has increased from 32.1% to 40.6%. In the categories of business processes/ICT (structural investments in ICT), policy (centralising access control for maritime traffic) and cooperation between the immigration chain and between countries (cooperation and exchange of information), the Council notes progress. This does not apply to the other recommendations.

The situation in 2024 compared to the state of affairs in 2017 is presented in a table below.

Table 1: State of affairs on border control recommendations, 2024

| No. | Recommendations | Review 2017 | Review 2024 |
|-----------------------------------|--|--------------|--------------------|
| 1. | <i>Follow up and implement the recommendations of the Law Enforcement Council that have not been (fully) followed (see diagram below).</i> | | |
| To the Minister of Justice | | | |
| 1.a | Legally assign the task of border control to a single authority and also regulate the powers granted to the border control employees. | Followed | -- |
| 1.b | Make haste with the adoption of the legal status decision for the IBPS. | Not followed | Not followed |
| 1.c | Subsequently, place the employees in the organisation on the basis of the legal status decree. | Not followed | Not followed |
| 1.d | Synchronise the mandate in the Mandate Decree and the decision-making practice regarding refusal of admission. | Not followed | Partially followed |

⁵ Coast Guard Annual Plan, 2019 (p. 20).

| | | | |
|--|---|--------------------|--------------------|
| 1.e | Synchronise the 1985 Admission Decree and the practice with regard to places where persons may disembark, and access control takes place. | Not followed | Not followed |
| 1.f | Make the ActBMS border control system operational again in the short term. | Not followed | Followed |
| 1.g | Consider whether the choice to centralise access control for maritime traffic at the Anguilla dock in the Simpson Bay Lagoon is wise in the long term, also in view of the presumed low willingness to register and the recent policy of intensifying maritime control. | Partially followed | Followed |
| 1.h | Promote cooperation and exchange of information between the services and organisations involved in border control and inspection and between the countries of Sint Maarten, Curaçao and the Netherlands, parties to the ORVK. | Partially followed | Followed |
| 1.i | Work with the French authorities to improve border control in the Simpson Bay Lagoon. | Partially followed | Partially followed |
| 1.j | Evaluate the integration of border control into the IBPS, in line with the proposal of the Progress Committee. | Followed | -- |
| To the Minister of Justice with regard to the Immigration and Border Protection Services: | | | |
| 1.k | Improve communication and information exchange between management and border control staff and invest in transparent personnel policies. | Partially followed | Not followed |
| 1.l | Invest in the training of the employees, so that the focus of border control is not almost exclusively on document checks, but also suspicious situations and suspicious behaviour are recognised more than before. | Partially followed | Partially followed |
| 1.m | Improve the accountability of the results and relevant figures to the Minister of Justice on a structural basis. | Not followed | Not followed |
| 1.n | Promote a consistent and transparent integrity policy at the admissions organisation that actively monitors compliance with codes of conduct. Ensure that the policy is adhered to in practice. | Not followed | Not followed |
| 2. | <i>In the short term, ensure that the transition from the border control tasks and immigration control to KPSM can be followed in full. Take the report as a starting point: Transition G&V from the IBPS to KPSM.</i> | New | Disregarded |
| 3. | <i>Subsequently, place the employees at the KPSM on the basis of the legal status decree.</i> | New | Disregarded |
| 4. | <i>Revoke the Mandate Decree to the IBPS. Arrange the mandate in accordance with the new practice. (included at 1d)</i> | New | Disregarded |
| 5. | <i>Provide a structural investment in technological applications of a modern and sustainable border management system as soon as possible.</i> | New | Partially followed |
| 6. | <i>Maintain the practices to further promote cooperation between services and countries. Make further arrangements for the (interregional and national) sharing of information. In addition, pay attention to cooperation within immigration control in general.</i> | New | Followed |
| 7. | <i>Maintain practices for intensifying cooperation with the French authorities. Keep in mind the staff shortage on both sides and the integral importance of the entire island. Where necessary, bottlenecks in the cooperation should be forwarded for consideration at the Kingdom level.⁶</i> | New | Partially followed |
| 8. | <i>Free up resources for additional training. Start by offering further training for the Dutch language for those who need it. Provide structural training and development opportunities for the entire staff.</i> | New | Partially followed |

Admission and expulsion

In 2014, the Council published a study on the admission and expulsion of foreigners in Sint Maarten, focusing on applications related to employment. As a result of this inspection, the Council made six recommendations to resolve the identified bottlenecks in the practice of admission and expulsion.

In 2019, the Council conducted a review in which the Council assessed the extent to which the six recommendations made in 2014 had been followed up. This inspection showed that of these six recommendations, only one recommendation had been followed, one recommendation had been partially followed and four recommendations had not been followed up. As a result of this review, the Council urged the Minister of Justice to give priority to the (five) recommendations from 2014 that have not yet been (fully) addressed.

⁶ This recommendation was included in the 2017 Border Control Review Report (p.33) but inadvertently not listed in the recommendation's summary (p.12) of the relevant 2017 report.

The state of affairs in 2024 is that four recommendations have not been followed and one has been followed.

Followed up

The recommendation that has been followed relates to investment in the knowledge of the employees in the field of falsifications and the creation of a document database.

Not followed up

The recommendations that have not been followed concern the subjects of labour market study/labour market policy (1), implementation/enforcement of admission policy (1), drafting/publishing written policy (1) and synchronisation of decision-making and expulsion practice (1).

Neither the Ministry of Justice nor the IBPS, in collaboration with VSA, has commissioned a labour market study into the required quality and quantity of workers in Sint Maarten. Therefore, there is no question of including the results of the study in the supervision of the actual implementation and enforcement of the admission policy. Both recommendations made in this regard were assessed as not being followed.

In recent years, a start has been made on putting codes of conduct in writing and bringing legislation into line with decision-making and expulsion practice. However, the process is in its early stages and there is still a lot of work to be done. In the current situation, there are still discrepancies between legislation, policy and decision-making and expulsion practice. Both recommendations made in this regard were assessed as not being followed.

Compliance percentage

The *compliance* rate is 33.3%. There has been a slight improvement in the level of follow-up of the recommendations given that the compliance rate has increased from 25% to 33.3%. Progress has been made in the category of training (training in falsifications and the creation of a document database). This does not apply to the other recommendations.

Table 2: State of affairs of recommendations for admission and expulsion, 2024

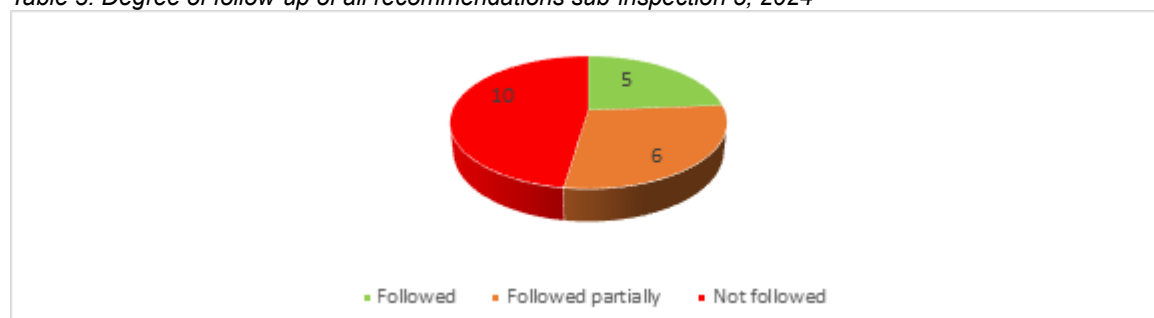
| No. | Recommendation | Review 2019 | Review 2024 |
|--|--|--------------------|--------------|
| 1. | Give priority to the recommendations that have not yet been (fully) addressed (see diagram below). | | |
| To the Minister of Justice | | | |
| 1.a | In collaboration with the Ministry of VSA, have a labour market study carried out into the required quality and quantity of employees in Sint Maarten and on the basis of this, in consultation with the Ministry of VSA, draw up a labour market and admission policy for foreigners. | Not followed | Not followed |
| 1.b | Ensure that the admission policy is followed and enforced and include the results of the study in cooperation with the Ministry of VSA so that at least the social and economic growth, security and the legal order of Sint Maarten are protected. | Not followed | Not followed |
| To the Minister of Justice with regard to the IBPS | | | |
| 1.c | Design a file registration and tracking system that allows all files to be traced smoothly and provides better insight into the nature and quantity of the total influx of foreigners in Sint Maarten and the foreigners residing in Sint Maarten. | Followed | -- |
| 1.d | Put unwritten policies in writing and publish them. | Not followed | Not followed |
| 1.e | Reconcile the requirements in the legislation, policy and application form on the one hand and the decision and expulsion practice on the other. | Not followed | Not followed |
| 1.f | Invest in the knowledge of the employees on recognising falsified documents and make use of the knowledge available in Sint Maarten (1) and investigate the possibilities for a database containing the most common documents from the most common countries of origin (2). | Partially followed | Followed |

Overall state of affairs 2024

In this fifth sub-inspection in 2024, the Council looked at the extent to which the recommendations made on the two aforementioned topics have been followed. These are the reports on border control of the movement of persons (16 recommendations) and the admission and expulsion of foreigners (5 recommendations).

This fifth sub-inspection shows that out of a total of 21 recommendations, 5 recommendations were followed, 6 recommendations were partially followed, and 10 recommendations were not followed. In the table below, the Council shows the state of affairs in terms of follow-up for both subjects combined.

Table 3: Degree of follow-up of all recommendations sub-inspection 5, 2024



Overall analysis

Overall, it can be said that a large part of the recommendations, including a number of important preconditions (in the categories of personnel policy, development plan/job classification, policy and legal framework) have still not been regulated because the recommendations have not been followed or have only been partially followed. The Council notes that too many of the recommendations have not been addressed for almost ten years.

These recommendations concern aspects of a structural nature. By this, the Council means, among other things, aspects that form the basis of a well-built and functioning organisation. In previous Council reports, these aspects are also mentioned as factors that form bottlenecks for further development to a greater or lesser extent throughout the justice chain. In other words, without change, structural improvement is not possible.

The IBPS is responsible for the implementation of border control and immigration control on Sint Maarten. The Council considers that a major bottleneck within the IBPS in recent years has been the lack of continuity. Due to the many changes in management, changes in the management of the organisation and personnel changes, the organisation lacked structure and direction, making it largely rudderless.

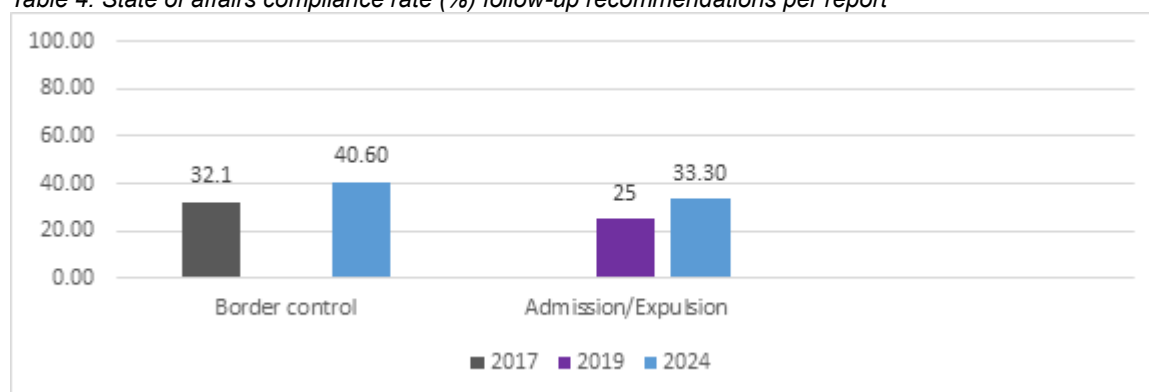
Other well-known bottlenecks, which also recur in this sub-inspection, concern the lack of preconditions of a financial and personnel nature and policy support for the IBPS. The impression that the Council gets is that due to a lack of structure and continuity, a lot of time and energy has been wasted for an extended period when development and improvements should have been made.

In conclusion

Finally, the Council is aware that the recommendations are often disparate and that some recommendations are less complex than others. Nevertheless, the Council has expressed the state of affairs for each recommendation as a percentage for each report⁷. The percentage mentioned in table 4 is not a hard measure, but only serves as an indicator to be able to show the state of affairs per report in a more visual way.

⁷ The compliance percentage as an indicator is calculated by assigning 1 point to each recommendation followed, ½ point to each recommendation partially followed and no points to a recommendation not followed. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

Table 4: State of affairs compliance rate (%) follow-up recommendations per report



Recommendation and monitoring 2025

On the basis of the above, the Law Enforcement Council makes the following recommendation to the Minister of Justice:

Implement the sixteen Council recommendations that have not yet been (fully) addressed (see also Annex 1) and make the necessary resources available as soon as possible.

In 2025, the Law Enforcement Council will continue to periodically monitor the progress of the recommendations to be followed. Given the number of recommendations, the Council may have to prioritise in this regard.

1. Introduction

1.1 Rationale

The Law Enforcement Council (the Council) is responsible for the general inspection of the organisations of the judicial chain in Curaçao, Sint Maarten and the Netherlands as regards the public bodies Bonaire, Sint Eustatius and Saba (hereinafter: Caribbean Netherlands). The Council is also responsible for the general inspection of the quality and effectiveness of judicial cooperation between the countries.

The Council has issued more than 100 inspection reports since 2012 and has included the general review as part of its annual plan since 2020. The Council published sixty-three (63) inspection reports in Sint Maarten up until January 2024. Most of the reports, which have been the subject of a review, consistently show that the follow-up to recommendations is a bottleneck because recommendations have not been followed up or not fully followed up.

From 2020 to 2023, four sub-inspections were carried out on three overarching themes/organisations, namely youth and rehabilitation (review of a total of four reports), the Public Prosecutor's Office and the Crime Prevention Fund (review of a total of five reports) and the Sint Maarten Police Force (KPSM) (review of a total of nine reports carried out in two sub-inspections).

The Council will continue to carry out reviews in 2024 in accordance with its work methods. To this end, the Immigration and Border Protection Service (IBPS) has been included as one of the subjects in its annual plan for 2024. In this context, the Council is conducting a second review following the previous reports on border control of the movement of persons in Sint Maarten (2014⁸ and 2017⁹) and admission and expulsion of foreigners in Sint Maarten (2014¹⁰ and 2019¹¹). The reviews carried out earlier showed that not all recommendations had been followed¹².

Border control of the movement of persons in Sint Maarten

The Council published an inspection in 2014 in which the Council looked at how border controls on the movement of persons are carried out in Sint Maarten. In the report, the Council made fourteen recommendations for improving border control of the movement of persons.

The Council then carried out a review in 2017 to assess the extent to which the 14 recommendations issued in 2014 had been followed up. This inspection showed that out of the 14 recommendations, five recommendations were partially followed up and two were fully followed up. Seven recommendations were not followed. In the 2017 review, the Council therefore made one recommendation to address the (12) recommendations which had not yet been followed (in full) and six new recommendations.

Admission and expulsion of foreigners in Sint Maarten

The Council published in 2014 an inspection on the admission and expulsion of foreigners in Sint Maarten, focused on applications related to the performance of work. Following this inspection, the Council made six recommendations to address the identified bottlenecks related to admission and expulsion practices.

⁸ Border control of the movement of persons in Sint Maarten, 2014.

⁹ Border control of the movement of persons in St Maarten, a follow-up inspection, 2017.

¹⁰ Sint Maarten Welcomes you, 2014.

¹¹ Follow-up inspection on the implementation of the recommendations concerning the admission and expulsion of foreigners in Sint Maarten, 2019.

¹² The tasks relating to border control of the movement of persons and the control of foreigners in Sint Maarten were laid down by the IBPS in 2010. In 2016 these tasks were transferred to the KPSM, to be transferred back to the IBPS in 2021. This has affected a number of recommendations. Where appropriate, the recommendations have been considered from the IBPS perspective or disregarded due to this new/changed situation.

The Council carried out a review in 2019 in which the Council assessed the extent to which the six recommendations made in 2014 had been followed up. This inspection showed that of the six recommendations made in 2014, only one was followed, one was partially followed and four were not addressed. Following this review, the Council urged the Minister of Justice to give priority to the (five) recommendations of 2014 which had not yet been (fully) addressed.

Second follow-up inspection 2024

In this second review, the Council assesses the state of affairs of the follow-up to the recommendations of the two reviews mentioned above, which have been partially and not yet followed up. The tasks relating to border control of the movement of persons and the control of foreigners in Sint Maarten were assigned to the IBPS in 2010.

In 2016 these tasks were transferred to the KPSM, to be transferred back to the IBPS in 2021. This has implications for several recommendations. Where appropriate, the recommendations will be considered from the perspective of the IBPS or disregarded due to this new/changed situation.

1.2 Central question and sub-questions

The central question in this inspection is:

To what extent and in what way do the Minister of Justice and the judicial organisations give follow up to the recommendations of the Council in the reports on border control of the movement of persons in Sint Maarten (2017) and the admission and expulsion of foreigners in Sint Maarten (2019)?

To answer the central question, the following sub-questions have been formulated:

1. *To what extent have the recommendations been followed up?*
2. *What bottlenecks are there (if any)?*
3. *To what extent and in what way is follow-up being managed by those responsible?*

1.3 Delimitation

In this report, the Council describes the state of affairs regarding the follow-up to its recommendations on border control of the movement of persons in Sint Maarten and on the admission and expulsion of foreigners in Sint Maarten. In this review, the Council will consider developments from the publication of the first follow-up inspection in 2017 (border control) and 2019 (admission and expulsion) to the end of 2023.

1.4 Assessment framework

The starting points of this inspection are the recommendations listed below as included in the 2017 follow-up reports (border control) and 2019 (admission and expulsion). The Council shall assess the follow-up to the recommendations made. The recommendations therefore form the framework for the review of this inspection.

Border control of the movement of persons in St Maarten

In the follow-up inspection in 2017, one recommendation was made on the recommendations not followed (1) and a number of new recommendations (2 to 8) were made.

To the Minister of Justice with regard to the recommendations of the 2014 report.

Table 5: State of affairs Recommendations 2017

Recommendation 1 in 2017:

| 1. Follow up and implement the recommendations of the Law Enforcement Council that have not been (fully) followed (see diagram below). | |
|---|--------------------|
| Recommendation 2014 | Status 2017 |
| To the minister of Justice | |
| 1.a Legally assign the task of border control to a single authority and also regulate the powers granted to the border control employees. | Followed |
| 1.b Make haste with the adoption of the legal status decision for the IBPS. | Not followed |
| 1.c Subsequently, place the employees in the organisation on the basis of the legal status decree. | Not followed |
| 1.d Synchronise the mandate in the Mandate Decree and the decision-making practice regarding refusal of admission. | Not followed |
| 1.e Synchronise the 1985 Admission Decree and the practice with regard to places where persons may disembark, and access control takes place. | Not followed |
| 1.f Make the ActBMS border control system operational again in the short term. | Not followed |
| 1.g Consider whether the choice to centralise access control for maritime traffic at the Anguilla dock in the Simpson Bay Lagoon is wise in the long term, also in view of the presumed low willingness to register and the recent policy of intensifying maritime control. | Partially followed |
| 1.h Promote cooperation and exchange of information between the services and organisations involved in border control and inspection and between the countries of Sint Maarten, Curaçao and the Netherlands, parties to the ORVK. | Partially followed |
| 1.i Work with the French authorities to improve border control in the Simpson Bay Lagoon. | Partially followed |
| 1.j Evaluate the integration of border control into the IBPS, in line with the proposal of the Progress Committee. | Followed |
| To the Minister of Justice with regard to the Immigration and Border Protection Services: | |
| 1.k Improve communication and information exchange between management and border control staff and invest in transparent personnel policies. | Partially followed |
| 1.l Invest in the training of the employees, so that the focus of border control is not almost exclusively on document checks, but also suspicious situations and suspicious behaviour are recognised more than before. | Partially followed |
| 1.m Improve the accountability of the results and relevant figures to the Minister of Justice on a structural basis. | Not followed |
| 1.n Promote a consistent and transparent integrity policy at the admissions organisation that actively monitors compliance with codes of conduct. Ensure that the policy is adhered to in practice. | Not followed |
| Recommendation 2 to 8 in 2017 | |
| 2. In the short term, ensure that the transition from the border control tasks and immigration control to KPSM can be followed in full. Take the report as a starting point: Transition G&V from the IBPS to KPSM. | |
| 3. Subsequently, place the employees at KPSM on the basis of the legal status decree. | |
| 4. Revoke the Mandate Decree to the IBPS. Arrange the mandate in accordance with the new practice. (included at 1d) | |
| 5. Provide a structural investment in technological applications of a modern and sustainable border management system as soon as possible. | |
| 6. Maintain the practices to further promote cooperation between services and countries. Make further arrangements for the (interregional and national) sharing of information. In addition, pay attention to cooperation within immigration control in general. | |
| 7. Maintain practices for intensifying cooperation with the French authorities. Keep in mind the staff shortage on both sides and the integral importance of the entire island. Where necessary, bottlenecks in the cooperation should be forwarded for consideration at the Kingdom level. ¹³ | |
| 8. Free up resources for additional training. Start by offering further training for the Dutch language for those who need it. Provide structural training and development opportunities for the entire staff. | |

Admission and expulsion of foreigners in Sint Maarten

In the follow-up inspection in 2019, the Council recommended to the Minister of Justice that priority be given to the (five) recommendations of 2014 that had not yet been (fully) addressed.

¹³ This recommendation was included in the 2017 Border Control Review Report (p.33) but inadvertently not listed in the recommendation's summary (p.12) of the relevant 2017 report.

To the Minister of Justice on the recommendations of the 2014 report

Table 6: State of affairs Recommendations 2019

| Recommendation 2019 | |
|--|-----------------------|
| 1. Prioritise the recommendations not yet (fully) made (see diagram below). | |
| Recommendation 2014 | Position 2019 |
| To the Minister of Justice | |
| 1.a In collaboration with the Ministry of VSA, have a labour market study carried out into the required quality and quantity of employees in Sint Maarten and based on this, in consultation with the Ministry of VSA, draw up a labour market and admission policy for foreigners. | Not followed up |
| 1.b Ensure that the admission policy is followed and enforced and include the results of the study in cooperation with the Ministry of VSA so that at least the social and economic growth, security and the legal order of Sint Maarten are protected. | Not followed up |
| To the Minister of Justice with regard to the IBPS | |
| 1.c Design a file registration and tracking system that allows all files to be traced smoothly and provides better insight into the nature and quantity of the total influx of foreigners in Sint Maarten and the foreigners residing in Sint Maarten. | Succeeded |
| 1.d Put unwritten policies in writing and publish them. | Not followed up |
| 1.e Reconcile the requirements in the legislation, policy and application form on the one hand and the decision and expulsion practice on the other. | Not followed up |
| 1.f Invest in the knowledge of the employees on recognising falsified documents and make use of the knowledge available in Sint Maarten (1) and investigate the possibilities for a data base containing the most common documents from the most common countries of origin (2). | Partially followed up |

1.5 Inspection approach

On the basis of the earlier reports and literature research, among other things, an orientation has taken place which has served as a basis for the plan of approach. The follow-up inspection began by issuing written questionnaires to the Ministry of Justice and the IBPS. Following this, in-depth interviews were held with the Ministry of Justice, the IBPS, the Coast Guard and the Royal Marechaussee on Sint Maarten.

The Council then analysed the information and prepared the draft report. This draft report was presented by the Council to both the ministry and the organisations involved for rebuttal. The Council then processed the rebuttal responses and adopted the report.

1.6 Reading Guide

This report is structured as follows. Following the introductory chapter 1, relevant background information relating to this inspection is provided in Chapter 2. In Chapter 3, the Council describes, per recommendation, the situation at the time of the report and the recommendation, respectively, in the report on border control published in 2017. The results of this review in 2024 are then formulated. Finally, an assessment follows.

In Chapter 4, the Council describes, per recommendation, the situation at the time of the report and the recommendation, as set out in the report on admission and expulsion published in 2019. The results of this review in 2024 are then formulated. Finally, an assessment follows. Chapter 5 provides an overarching picture, the answers to the main and sub-questions, and the recommendations.

2. Background information

Introduction

Border control in general and border control of the movement of persons in particular is of great importance for law enforcement in Sint Maarten. The island has a relatively large inflow and outflow of people relative to its population. The economy of Sint Maarten is largely dependent on visitors in terms of income and the continuity of the economy is also largely dependent on migrant workers.

The border between Sint Maarten and the French part of the island is an open border and there is free movement between the two parts. Sint Maarten and Saint Martin have their own border controls when someone arrives on the island (external border). It is therefore important to ensure that border control is effective, that foreigners are monitored (supervision, admission and expulsion) and that there is good cross-border cooperation with the French authorities.

Since the Council issued its report on border control of the movement of persons in 2014, the subject of border control¹⁴ and the control of foreigners has been raised in several Council inspections.

These reports identified, inter alia, the importance of implementing and enforcing written procedures and policies based on legislation, cooperation, exchange of information, availability of (modern) technical resources and well-trained personnel for the proper functioning of border control and the control of foreigners.

Major developments in the border control and immigration control task since '10/10/10'

In the reports '*border control of the movement of persons in Sint Maarten*' and '*Sint Maarten welcomes you!*'¹⁵ (2014) the arrangements for border control and immigration control have been described. It was already noted by the Council and described in this report that this work was entrusted to different services in different laws and recommended that the legislator clarify this.¹⁶

In 2012, a covenant (so called by the parties concerned) was drawn up between the KPSM and the (then so-called¹⁷) Immigration and Naturalisation Service (IND) on the basis of one of these laws.¹⁸ The memorandum of understanding provided for the transfer of the tasks, powers and responsibilities of the KPSM in relation to border control and immigration control to the IBPS and regulated the operational cooperation between the KPSM and the IBPS.

In the course of 2012, on the basis of the Justice Organisational Decree (2010), the border control and immigration control by the police force were transferred to the IBPS. This brought entry (border control), admission, supervision and expulsion within one organisation (the IBPS) and placed under the authority of the IBPS's Director.

However, in 2016 the Minister of Justice (again) separated certain tasks that had until then been undertaken by the IBPS (through the covenant). The border control task¹⁹ (first and second-line) and the supervision task (including mobile control) have since been under the responsibility of the KPSM and the (administrative) admission and residency task has been (still is) under the responsibility of the IBPS.

¹⁴ Law Enforcement Council (2014), border control of the movement of persons in Sint Maarten.

¹⁵ Law Enforcement Council (2014), Sint Maarten welcomes you! Inspection into the admission and expulsion of foreigners in Sint Maarten, focused on applications related to the performance of work.

¹⁶ See National Decree of the Government of Sint Maarten regulating the establishment of immigration services and the task and organization of immigration officials National Decree on Immigration Officials and National Decree, containing general measures, on subdivision and further elaboration of the Ministry of Justice.

¹⁷ The [Justice Organisational Decree](#) (valid until 30-07-2019) talks about Immigration and Naturalisation Service (IND). The [Justice Organisational Decree](#) of 20 December 2021 talks about Immigration and Border Protection Services (IBPS).

¹⁸ Seventh report by Sint Maarten Progress Committee, 2012.

¹⁹ See also the mutual arrangement between Sint Maarten and the Netherlands as referred to in Article 38(1) of the Statute of the Kingdom of the Netherlands to strengthen the border control of Sint Maarten (mutual arrangement strengthening border control Sint Maarten) in force until 1 January 2020, Stcrt. 2017, 72542.

On 31 May 2019, a cooperation protocol was signed by the Minister of Justice, the director of the IBPS and the Chief of Police.²⁰ The protocol regulates the (sustainable) cooperation between the IBPS and the KPSM, concerning the implementation of tasks entrusted to it by the National Ordinance on Admission and Expulsion²¹, the Entry decree²² and (other) related laws and regulations.

In March 2021, the Minister of Justice reinstated the border control and supervisory tasks under the full authority of the IBPS.²³ On the basis of an evaluation of the legal structure of the Sint Maarten Police Force, it was found that having the Border Control and Mobile Control Unit under the KPSM was not in accordance with the National Ordinance Establishment and organisation of national government²⁴. According to the Justice Organisational Decree, border control is not formally the responsibility of the police, according to the Minister of Justice.²⁵

The IBPS went back to being composed of three parts, as before. One component is admission and residency, where the administrative part takes place. The second component involves the border control (entry) section located at PJIA airport and seaports, and the third component consists of immigration investigation and control (supervision) done by the mobile control unit.

Reinforcement of border control 2017²⁶

As part of the reconstruction of Sint Maarten, agreements were made between Sint Maarten and the Netherlands in 2017 on the strengthening of border control of persons and goods in Sint Maarten and laid down in the mutual arrangement on the strengthening of border control.²⁷ On 20 December 2017, this mutual arrangement entered into force and was in principle for 2 years, until 1 January 2020.

Two-day work conference 2018

In January 2018, a two-day work conference was organised by the Minister of Justice and the Dutch Representation in Sint Maarten, on border control and the strengthening of the local judicial chain following Hurricane Irma.²⁸ The conference discussed with the judicial chain partners possible ways and means of strengthening the borders of Sint Maarten and increasing the organisational capacity of at least the Police Force, Customs and the Prison.

Cooperation and information 2019²⁹

In previous States of Law Enforcement and reports, the Council has already stressed the importance of cooperation and of getting the information infrastructure in order.

The Council therefore welcomed the various conventions, protocols and cooperation agreements (re)established in 2019 on strengthening border control, including:

- **23 January:** the amended MOU of cooperation to prevent and combat human trafficking and human smuggling between the countries of the Kingdom.
- **24 January:** the protocol on the deployment of personnel from the flexible pool Royal Netherlands Marechaussee between the countries of the Kingdom.
- **31 May:** The protocol on cooperation between the Immigration and Border Protection Services of Sint Maarten and the Sint Maarten Police Force for the period 31 May 2019 - 31 May 2020.

²⁰ Protocol on the cooperation between the immigration and border security services of Sint Maarten and the Police Force of Sint Maarten for the period 31 May 2019 - 31 May 2020; 31 May 2019

²¹ <https://lokaleregelgeving.overheid.nl/CVDR142597/3>

²² <https://lokaleregelgeving.overheid.nl/CVDR141942>

²³ <https://www.ministryofjusticesx.com/border-protection-mobile-unit/>

²⁴ <https://lokaleregelgeving.overheid.nl/CVDR157703/3>

²⁵ <https://lokaleregelgeving.overheid.nl/CVDR206088>

²⁶ <https://www.raadrechtshandhaving.com/wp-content/uploads/2020/05/Eindrapport-Toelating-en-Uitzetting-Sint-Maarten-24-maart-2020.pdf>

²⁷ <https://zoek.officielebekendmakingen.nl/stcrt-2017-72542.html>

²⁸ Representatives of the Sint Maarten Police Force, Prison, Customs, Coast Guard, Public Prosecutor's Office, Royal Marechaussee, Court of Guardianship, Foundation Judicial Institutions Sint Maarten, Ministry of Justice of Sint Maarten, National Security Service Sint Maarten, Ministry of Justice and Security, Dutch Customs, Ministry of Defence, Ministry of Home Affairs and Kingdom Relations, Detective Cooperation Team, Dutch Police and the Law Enforcement Council.

²⁹ <https://www.raadrechtshandhaving.com/wp-content/uploads/2020/06/Eindversie-Staat-van-de-rechtshandhaving-Sint-Maarten-2019-.pdf>

- 17 June: The agreement to formalise the Intelligence Center Sint Maarten between the KPSM, Interpol Sint Maarten, the Reporting Bureau Unusual Transactions, the OM, the National detectives, Customs, the Coast Guard Caribbean and the Substation Sint Maarten, and the RSINT

Strengthening of border control 2021³⁰

As indicated above, strengthening border control is one of the components of the country package for strengthening the rule of law in Sint Maarten. The aforementioned mutual arrangement that came about in 2017 after the hurricanes Irma and Maria already provided for this but ended on 31 July 2021.

However, the new '*Protocol on strengthening border control in the Caribbean countries of the Kingdom*³¹', adopted on 4 February 2021, continues the basis already established. The accompanying action plan sets out the needs of the different authorities involved in border control, such as the Coast Guard and Customs. The working group preparing the action plan made progress in 2021 and stakeholders were positive in their prospects for its completion.

Intelligence Center Sint Maarten (ICSM)

The ICSM is based on a cooperation agreement concluded in 2019 and has been operating since 2019 as an information hub where the designated coordinators of the various judicial services and the National Security Service Sint Maarten provide, share and/or query information in favour of the subject matter they are dealing with. In May 2023, the Immigration and Border Protection Service joined the ICSM, and cooperation is being further developed.³²

³⁰ https://www.raadrechtshandhaving.com/wp-content/uploads/2022/05/Final-version_State-of-Law-Enforcement-2021.pdf

³¹ <https://wetten.overheid.nl/BWBR0045143/2021-02-05>

³² Law Enforcement Council, 11 March 2024, follow-up inspection on human trafficking and human smuggling.

3. State of affairs border control

3.1 Border control of the movement of persons

Structure Chapter 3

The Council describes in this chapter the findings regarding the follow-up to the 2017 recommendations. The Council chooses to do this thematically. For each recommendation³³, the Council briefly describes the state of affairs in 2017, followed by the state of affairs in 2024 and its assessment thereof. This chapter concludes with an *overall* analysis of the state of affairs regarding the follow-up to the recommendations in the context of border control of the movement of persons.

In 2021, the tasks related to border control of the movement of persons and immigration control were transferred for a second time from the KPSM to the IBPS. This has affected a number of recommendations. Recommendations A2, A3 and A4 have not been taken into account for this reason and recommendations A5 to A8 have been taken into account from the IBPS's perspective because of this change.

Successively, the following topics are discussed: Legal status, placement, synchronisation of mandating and decision-making practice, synchronisation of entry decision and practice, structural investments in ICT, centralisation of access control maritime traffic, cooperation and information exchange, cooperation with French authorities, internal organisation IBPS, training, accountability of results and figures and integrity policy.

3.2 Legal position decree IBPS

A1.b: Make haste with the adoption of the legal status decree for the IBPS.

The recommendation has been classified by the Council in its database under the category of 'legal framework'.

State of affairs 2017

As a result of the (re-) assignment of the border control tasks and immigration control at the KPSM in 2016, the civil servants concerned would be placed within the police force, if they were not already. Therefore, the intention was to include them in the Legal Status Decree for the Police Force Sint Maarten. In order to do so, the job classifications and establishment plan also had to be modified. In previous inspections³⁴, the Council had already established that there were still no job classifications, and no legal status decree had entered into force for the police force. The recommendation was assessed as not followed in 2017.

Findings 2024

The inspection shows that, in the current situation, no specific legal position decision has been drawn up by the Ministry for the staff employed by the IBPS. Several interviewees indicate that staff policy has for years been characterised by a lack of clarity which has left them unaware of their legal position.

In 2023 a legal status decree for the police force came into force³⁵. A number of interviewees also point this out and indicate that this means that some staff of the IBPS, that is, those with an appointment as a civil servant at the IBPS, are also included in this. For the other staff of the IBPS, the uncertainty about the legal status continues. This is because it is partly a patchwork of (provisional) schemes according to interviewees of the IBPS. However,

33 The classification used per recommendation in this section refers to the scheme set out in paragraph 1.4, where the capital letter 'A' stands for 'recommendation'. Two recommendations had already been followed in 2017 (A1.a and A1.j). Therefore, only the state of affairs of the unfollowed recommendations (A1.b to A1.i, A1.k and A1.l) will be presented below.

34 Law Enforcement Board (2016), Law Enforcement State 2016.

35 National Decree of the 22th December 2023, regulated the entry into force of the law decree police Sint Maarten.

according to the interviewees of the Ministry, the other staff of the IBPS are covered by the National Ordinance on Substantive Public Service Law (LMA).

Several interviewees indicate that ultimately the intention is still to draw up a separate legal status decree for the IBPS taking into account issues such as job and ancillary functions, irregularity, overtime and availability/accessibility of staff. Management of the IBPS is currently taking steps to initiate the process of adopting its own legal status decree.

Assessment

The recommendation has **not** been **followed**. In the current situation, there are still different legal statuses and ambiguities with regard to (a part of) the staff. The Legal Status Decree of the Sint Maarten Police Force applies to part (appointed as civil servant at the border control) of the IBPS and according to the Ministry the rest of the IBPS falls under the LMA. Because no specific legal status decree for the IBPS has been secured ten years after the Council's recommendation, the Council believes the recommendation is still relevant. The Council therefore stresses the necessary prioritisation of the preparation of a specific legal status decree for the IBPS.

3.3 Employee placement

A1.c: Subsequently, place the employees in the organisation on the basis of the legal status decree.

The recommendation has been classified by the Council in its database under the category 'Establishment plans and job classification.'

State of affairs 2017

This paragraph should be read in conjunction with the recommendation in the previous paragraph on the legal status IBPS. What has been included here also applies to this recommendation. The recommendation was assessed as not followed in 2017.

Findings 2024

Interviewees indicate that the IBPS staff is currently placed according to the new function book of the Ministry of Justice. The process is in its early stages and there is a lot of catching up to do. Also, according to interviewees, certain functions – such as functions within the Intell Unit – have been created within the IBPS without these functions being included in the function book. This has created a situation whereby the function does not formally exist. As a result, the security inspection by the national security service required by law for this so-called 'function of trust'³⁶ cannot, in the current situation, be carried out according to an interviewee of the IBPS management and therefore these functions cannot be formally filled.

Furthermore, the inspection reveals that employees are often still waiting for official placement via a national decree or have not received an updated national decree for years despite changes in work and responsibilities. Employees are also working on a (temporary) contract basis and are now outside the (temporary) duration of the contract, or without a new contract.

Interviewees indicate that in 2023, multiple employees received placement letters stating the position they are placed in based on the new function book. Subsequently, no formal confirmation (national decree) was received. Interviewees assume that they will (eventually) be officially placed through a national decree, but this is not based on further communication or concrete information from the department and in the meantime many of them are still waiting on this.

³⁶ https://lokaleregelgeving.overheid.nl/CVDR156346#hoofdstuk_8

Assessment

This recommendation is closely linked to the recommendation in the previous section 3.2. What is included there is also relevant and has implications for the recommendation on the placement of employees. The recommendation on employee placement has **not** been **followed**. Although a function book for the Ministry of Justice has been established, the Council notes that only a part of the staff is placed on the basis of a current legal status decree.

The Council also notes that there is uncertainty about the placement process for all employees, including the status of the (created but not included in the function book) positions currently occupied by employees. The Council considers that the Minister should clarify this. This starts with the adoption of a legal position decree for the IBPS. Thereafter, all employees should be placed in accordance with that decree.

3.4 Synchronisation mandating and decision-making practice

A1.d: Revoke the Mandate Decree to the IBPS. Arrange the mandate in accordance with the new practice.

The recommendation has been classified by the Council in its database under the category of 'legal framework'.

The recommendation consists of two parts, namely the revocation of the old mandate and the provision of a new mandate.

State of affairs 2017

The refusal of entry is a task of the Minister of Justice, who had mandated this task in the Immigration Mandate Decree to the Director IND and Head of Admission and Residency, based on the Entry decree. In practice, the team leaders at the airport took the decision to refuse admission to persons. The existing practice and the legal basis had to be synchronised. No changes were made to the Mandate decree, and the recommendation was not followed.

Findings 2024

The inspection reveals that there is some uncertainty among the various interviewees as to whether or not a mandate decree exists. Several interviewees indicate that they believe that there is or should be a mandate decree, but that the document is not in their possession.

The inspection shows that the Immigration Mandate Decree of 2012³⁷ was withdrawn by the Minister of Justice on 25 October 2017 by ministerial decree.³⁸ The inspection has not shown that a new mandate has since been drawn up and announced by the Minister of Justice.

According to most interviewees, in practice decisions about refusals of entry at port and airport border points are taken by the (deputy) team leaders based on the input of the immigration officials concerned.

The Council refers to the recent judgment of the Joint court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba of 12 June 2024. This judgment deals in detail with the consequences of not arranging the mandate in relation to the decision taken without authorisation to refuse entry by an immigration official due to the absence of a mandate³⁹.

Assessment

The Council assesses the recommendation as a whole as **partially followed up**. The first part of the recommendation was **followed** by the withdrawal of the mandate.

³⁷ <https://www.sintmaartengov.org/Documents/Official%20Publications/AB%2035%20Mandaatregeling%20immigratie%202012.pdf>

³⁸ Minister of Justice, revocation of mandate Regime Immigration Affairs, 25 October 2017, [Arrangement of the Minister of Justice of 25 October 2017, revocation of mandate Regime Immigration Affairs 2012](https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:OGHACMB:2024:86).

³⁹ <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:OGHACMB:2024:86>

However, the second part of the recommendation has **not been followed**. No new mandate arrangement decree has been made and therefore no synchronisation of the mandate and the decision practice concerning refusal of admission has taken place. It is only the Minister of Justice who can refuse entry. The current practice in which the (deputy) team leaders decide is therefore in violation of the law.

The Council finds it incomprehensible that no new arrangements have been drawn up after the withdrawal of the mandate. The general principles of good administration require that the intervention of a citizen's rights be based on a legal basis. The regulation of mandating provides a basis for the application of powers.

This is important in order to promote legal equality and the permanence of policies and thereby also promotes the integrity of the application and decision-making process. The Council reiterates the importance of synchronising decision-making practice and the law, and thus prioritising the related mandating if desired or necessary, also on the basis of the results of the above-mentioned judgment of the Joint Court.

3.5 Synchronisation of Admission Decree and practice

A1.e: Synchronise the 1985 Admission Decree and the practice with regard to places where persons may disembark, and access control takes place.⁴⁰

The recommendation has been classified by the Council in its database under the category of 'legal framework'.

State of affairs 2017

According to the Admission Decree, persons are not to be formally disembarked outside PJIA and the port in Great Bay.

In practice, however, there were several areas where disembarkation occurred: Oyster Pond, Simpson Bay Lagoon, Pointe Blanche and the Anguilla dock. These ports were not formalised in regulations. For the Anguilla dock there was an arrangement (MoU) between Sint Maarten and Anguilla. The Council considered that the applicable legislation and the actual situation should be synchronised and found that the recommendation had not been followed.

Findings 2024

According to the Admission Decree, Sint Maarten still does not allow people to be disembarked outside the seaport in Great Bay and PJIA. All the interviewees indicate that they have been aware for years that in practice there are several places where people arrive or leave, with or without formal control, such as the Anguilla dock and Bobby's Marina. The interviewees also indicate that, as far as is known, this situation is still the case and that the Entry decree 1985 is still not synchronised with the current practice.

Assessment

The recommendation has **not been followed**. The Admission Decree has not been updated and is not in line with current practice. On the basis of its findings, the Council has for years noted a structural lack of policy and legislative capacity in the Ministry and judicial organisations. However, the Council still considers that, also in view of the importance for law enforcement, border controls of the movement of persons at national borders should be synchronised with the applicable legislation and the actual situation.

3.6 Structural investments in ICT

A1.f: Make the ActBMS border control system operational again in the short term.

The recommendation has been classified by the Council in its database under the category 'business processes and ICT'.

⁴⁰ <https://lokaleregelgeving.overheid.nl/CVDR141942>

A5: Provide a structural investment in technological applications of a modern and sustainable border management system as soon as possible.

The recommendation has been classified by the Council in its database under the category 'business processes and ICT'.

State of affairs 2017

The Council noted in 2017 that the KPSM had been closed off from all ACTS services, including ActBMS and ActFMS, due to late payment. The recommendation was assessed as not followed in 2017. In previous surveys, the Council has already noted that the lack of investment in technological applications has a negative impact on information and law enforcement.⁴¹

Findings 2024

Operationality ActBMS

According to several interviewees, the ActBMS system is operational at the airport and in the seaports. The current system (version 1.0) is out of date, often has faults, is not user friendly and an update of the system (version 2.0) has been required for several years.

Introduction of RADexBCM

Several interviewees indicate that ActBMS is used at the airport at all border control points, except for the *E-gates* in the departure hall of the airport where the RADexBCM system, replacing the ActBMS, has recently been installed. As a result, a situation has arisen at the airport where two different systems are used for border control. Data is currently 'dumped' on two different servers because the two systems cannot communicate with each other. This may cause the data used by the RADexBCM system to become obsolete.

Also, the RADexBCM system cannot communicate with systems in Curaçao and the Caribbean Netherlands. This is not beneficial for cooperation and the exchange of information. The RADexBCM system, according to several interviewees, is much more closely linked to the IBPS's border control activities and is also more user-friendly.

Given the high annual (licensing and maintenance) costs of such systems, several interviewees expect that ActBMS will eventually be phased out as a border management system at the airport and ports. However, they believe it is important to realise that the other organisations involved in border control are consulting ActBMS on Sint Maarten for information relevant to their work and that that function cannot simply be replaced.

Assessment

Operationality ActBMS (A1.f)

The recommendation to make the ActBMS operational again in the short term **has been followed up**. The Council notes, however, that the ActBMS system is operational at the airport and in the seaports but is now very outdated. The Council will continue to address this issue in its recommendation below.

Structural investments (A5)

This recommendation has been **partially followed**. The Council considers that with the acquisition and (a first phase) installation of the RADexBCM system, a start has been made with the installation of a new border management system at the airport.

In any case, the Council sees this as a structural investment in technological applications of a modern and sustainable border management system.

The Council notes, however, that there is still a need to make progress before this system is fully operational at the airport. Although there is a transitional period, the Council considers

⁴¹ Law Enforcement State 2016; Exchange of police and judicial information within the Kingdom (2015).

that a decision should be taken as soon as possible on the further implementation and maintenance of one or both systems.

In fact, the Council believes that systems which are not interconnected, and which result in fragmented information, especially in the context of border control, are highly undesirable and involve risks, such as the lack of an international alert.

In addition, the Council considers that an important element is to decide whether and when the system will be introduced at seaport border points. If this is not followed, the Council believes that the existing communication problems between the two systems will also have to be resolved within this framework.

Given the importance of functional and efficient border control for Sint Maarten, the Council stresses the importance of long-term planning coupled with structural investments in technological applications.

3.7 Center access control of maritime traffic

A1.g: Consider whether the choice to centralise entry control for maritime traffic at the Anguilla dock in the Simpson Bay Lagoon is wise in the long term, also in view of the presumed low willingness to register and the recent policy of intensifying maritime control.

The recommendation has been classified by the Council in its database under the heading 'policy'.

State of affairs 2017

In 2014, the IBPS had chosen to abandon the border point at the Simpson Bay Bridge immigration office. At the time, the Council advised the Minister of Justice to reconsider this changed situation, as it seemed to be in conflict with the Minister of Justice's new policy of intensifying maritime border control and increasing the willingness to register in maritime traffic. In 2017, it noted, among other things, that the Ministry had evaluated the distribution of entry control in light of the new policy and that no change had been made in the distribution among registration and entry locations. The evaluation had not yet led to the intensification of maritime border control. The recommendation was therefore assessed as partially followed.

Findings 2024

Center access control

There are two border points in the Simpson Bay Lagoon. Interviewees from various organisations confirm that the border points at the *Simpson Bay Bridge immigration office* and at the *Anguilla dock* are fully operational for maritime border control in the Simpson Bay Lagoon. The border points are also equipped with the necessary technical provisions. Insofar as is known, this control has never been centered on the Anguilla dock alone, nor would this have been functional. Furthermore, in the current situation, this border point consists of a small wooden accommodation that barely fits two people.

Registration readiness

Several interviewees indicate that the readiness to register in the maritime sector is high. This is partly because it is necessary and in their own interest for ships to keep their records in order, otherwise they may encounter difficulties when checking into their next destination.

Assessment

The recommendation **has been followed**. The choice was made not to centralise entry control of maritime traffic in the Anguilla dock. The two maritime border points are operational and are used for entry control.

3.8 Cooperation and exchange of information

A1.h: Promote cooperation and exchange of information between the services and organisations involved in border control and inspection and between the countries of Sint Maarten, Curaçao and the Netherlands, parties to the ORVK.

The recommendation has been classified by the Council in its database as 'cooperation: Chain/countries'.

A6: Maintain the practices to further promote cooperation between services and countries. Make further arrangements for the (interregional and national) sharing of information. In addition, pay attention to cooperation within immigration control in general.

The recommendation has been classified by the Council in its database as 'cooperation: Chain/countries'.

State of affairs 2017

The Council noted in 2017 that cooperation between the services in Sint Maarten had improved, in particular as regards border control at the airport. The focus seemed to be on this.

The port deserved more attention. Cooperation between the countries of the Kingdom still needed to be improved. From the PAGP, there was an initiative to carry out a baseline measurement of border controls in the countries and the possibilities for further cooperation between the countries. The Council considered that the recommendation had been partially followed.

Findings 2024

Cooperation

Interviewees from different organisations indicate that the cooperation between the IBPS and other authorities involved in border control (Customs, PAF, Civil Registry, KMar and other parts of the IBPS) is good. The quality of cooperation often depends on personal and often informal contacts, but overall, the relationships are good and there is a willingness to work with each other. Water patrols and planned checks on land are carried out jointly with other services.

Exchange of information

At a local level, the exchange of information with other services involved in border control is good, according to interviewees. If problems emerge, they are almost always caused by internal organisational problems (e.g. capacity) within a service itself.

The IBPS, after the border control was again placed with the IBPS in 2021, established its own information unit, the *Immigration Research Center* (IRC). The Council has already addressed this unit in its 2024 follow-up inspection report on trafficking in human beings.⁴²

The Council sees the establishment of the IRC, although in a start-up phase, as an opportunity for the IBPS to improve its information position and gather information. The IRC shall collect all information from the border control airport and seaports and share it with other services.

The interviewees further indicate that the information exchange between the different services is mainly via the ICSM, grouped in the Border Info group. This group also includes the Customs, the IBPS, the KPSM and the KMar. On the basis of the so-called 'country packages', investments are currently being made in the areas of equipment acquisition (software currently), training and in the future a physical office location to further increase the effectiveness of cooperation and information exchange.

Kingdom

⁴² Law Enforcement Council (2024), follow-up study on the follow-up to recommendations on tackling trafficking in human beings and trafficking in human beings and on prostitution policy and enforcement in Sint Maarten, page 24-25.

The cooperation and information exchange between the immigration chains of the countries Sint Maarten, Curaçao and the Netherlands is established in the ORVK⁴³ and is an integral part of the IBPS agenda of the JVO. In the framework of the ORVK, the countries and services of the countries concerned hold consultations 3 to 4 times a year. It is the intention to arrive at a consultation platform of IBPS directors, similar to the Board of Police Chiefs, according to an interviewee of IBPS management.

Cooperation and exchange of information are also taking place through CARINT on the return arrangements of deportees. A bottleneck experienced by the IBPS in the sharing of information is that Curaçao's immigration service is part of the KPC, which concerns police information. The exchange of this type of information is governed by different rules.

Assessment

Cooperation and exchange of information (A1H)

The Council notes that the recommendation on the promotion of cooperation and exchange of information between the IBPS and the authorities involved in border control and detection, as well as between the ORVK countries, *has been followed up*. Cooperation is usually dependent on personal and sometimes informal contacts, but in general there is a good relationship between them and a willingness to work with each other.

Further promotion of cooperation and information exchange (A6)

The Council concludes that this recommendation *has also been followed up*. The above-mentioned and secured cooperation and (interregional and national) information exchanges based on, and the structural attention through, the JVO ensures that there is a more structural focus on the continued promotion of interagency and country cooperation.

The establishment of the IRC within the IBPS, the establishment and effective functioning of the information exchange through the ICSM and the grouping of the various authorities involved in border control in a mutual consultation and information exchange group will, in the Council's view, ensure a structural promotion of cooperation between the services for the present and future.

3.9 Cooperation between the French authorities

A1.i: Work with the French authorities to improve border control in the Simpson Bay Lagoon.

The Recommendation has been classified by the Council in its database under the category of cooperation: Countries (regional).

A7: Maintain practices for intensifying cooperation with the French authorities. Keep in mind the staff shortage on both sides and the integral importance of the entire island. Where necessary, bottlenecks in the cooperation should be forwarded for consideration at the Kingdom level.⁴⁴

The Recommendation has been classified by the Council in its database under the category of cooperation: Countries (regional).

Recommendation A7 consists of two parts, namely the intensification of cooperation and the transit of bottlenecks.

State of affairs 2017

The Coast Guard had a border control task on the inland waters, territorial sea and connecting zone of Sint Maarten on the basis of the Kingdom Act Coastguard. The maritime control on the French side of the Simpson Bay Lagoon was in the hands of French customs. This access control on the French side was very limited in scope. The KPSM worked more closely with the French investigative services. The Coast Guard, on the other hand, had limitations in its cooperation with Customs. At a collegial level, this cooperation was good,

⁴³ <https://wetten.overheid.nl/BWBR0027352/2010-10-10>

⁴⁴ This recommendation is included in the Border Control Review Report (p.33) of 2017 but is not included in the recommendations overview (p.12) of the relevant report of 2017.

but it was managed from Guadeloupe and Paris, which meant that there was no effective local coordination. The recommendation was considered partially followed. In general, there was a shortage of staff on both sides of the island.

Findings 2024

Cooperation in general

Interviewees from various organisations indicate that cooperation with the French authorities can be difficult. In the past, despite the lack of a formal agreement, controls and inspections have often been coordinated on the basis of informal networks. In the current situation, this is no longer the case, due to the disappearance of the informal networks.

Cooperation on land

Interviewees of the IBPS indicate that the cooperation between the IBPS and the French authorities in the workplace is good. Cooperation during occasional mobile border and airport checks is particularly good. The close contacts allow for the exchange of information on deportees or other matters at a given time in a swift manner. It was also indicated that the possibility is there that IBPS immigration officers join the PAF at Grand Case airport on the French side. However, this does not take place due to capacity problems at the IBPS and therefore the opportunity to implement the same approach on both sides of the island is missed.

Maritime cooperation

Interviewees from various organisations indicate that the situation regarding border control in the Simpson Bay Lagoon is complex. In the French part of the Lagoon there is a lack of supervision by the French authorities, inter alia due to a lack of capacity and material at the French authorities (PAF, Gendarmerie, Customs).

There is cooperation between the Coast Guard and the French Navy based on an agreement between the military commanders in the region. The inspection shows that under the current protocol, the Coast Guard is not allowed to intercept or stop or detain in French waters.⁴⁵ It was foreseen that cooperation with the French authorities around Saint Martin in the field of enforcement and detection would be shaped in a new operational protocol. However, the French authorities strongly favoured a treaty which should in the long term also allow *hot pursuit* (pursuit of the act) in French waters. A treaty is currently being drawn up.⁴⁶

This (long-term) situation is not only frustrating but also dangerous according to interviewees of different organisations. In this way, a blind spot has emerged in French territorial waters where there is little or no supervision and where criminals can operate. Both Saint Martin and Anguilla are affected.

Interviewees from various organisations indicate that the desire to draw up a workable protocol for countries has been ongoing for years but has not yet been concluded. Several interviewees consider the lack of a mutual legal cooperation arrangement in the maritime domain between France and the Kingdom to be a worrying situation. The issue has not yet been raised at JVO level.

Assessment

Improve border control in Simpson Bay Lagoon in cooperation with the French authorities (A1.i).

The recommendation has been **partially followed up**. The Council concludes that the situation regarding border control in the Simpson Bay Lagoon is complex. Although cooperation with the French is actively sought out, ultimately it depends partly on the commitment and willingness of the French authorities.

⁴⁵ Annual Coastguard Plan, 2019 (page 20)

⁴⁶<https://zoek.officielebekendmakingen.nl/blg-1018595.pdf>

The inspection shows that from the perspective of judicial organisations, a combination of capacity problems and lack of powers on both sides responsible for border control disrupts cooperation. This situation negatively affects the implementation of border control on both sides of the border in the Simpson Bay Lagoon.

Maintain practices for intensifying cooperation with the French authorities. Keep in mind the staff shortage on both sides and the integral importance of the entire island. Where necessary, bottlenecks in the cooperation should be forwarded for consideration at the Kingdom level (A7).

The Council notes, on the basis of the inspection, that this (long-term) situation is creating a blind spot in French territorial waters, and that it also poses a threat to law enforcement in Sint Maarten. The Council considers that there is a focus from the various authorities on their own role in border control in the Simpson Bay Lagoon and on the intention to cooperate with the French authorities. However, given the current situation, improving border control, *in cooperation with*, is hardly possible.

The Council notes that for years there has been a desire and a need to draw up a workable protocol for the countries, but this has not yet happened. On the basis of the foregoing, the Council considers that the Minister should draw more concrete attention to this issue, inter alia through the JVO. The Council further considers that the Minister should take further initiatives to achieve a mutual legal cooperation regime in the maritime domain between France and the Kingdom at the Kingdom level.

The Council assesses the whole recommendation as partially followed. On the basis of the foregoing, the Council considers that the recommendation to continue to intensify cooperation with the French authorities while monitoring the shortage of staff on both sides **has been followed up**.

Referring bottlenecks for handling at kingdom level should be taken up more actively. This part of the recommendation has **not been followed**. This recommendation is therefore assessed as **partially followed**.

3.10 Internal organisation IBPS

A1.k: Improve communication and information exchange between management and border control staff and invest in transparent personnel policies.

The recommendation has been classified by the Council in its database into the category of 'personnel policy'.

The recommendation consists of two parts: Communication and information exchange and human resources policy.

State of affairs 2017

In 2017, as in 2014, communication and information exchange between management and employees was found to be poor. There was also no clear and transparent personnel policy. On the work floor itself there was hardly any control.

After the transition of duties to the KPSM, pending training, they had started mentoring and coaching the employees, middle management and management to improve mutual communication, direction and information exchange.⁴⁷

⁴⁷ Reporting transition border control & asset control from IBPS to KPSM.

The KPSM personnel policy had to be applied fully to all employees. The Council noted in 2017 that the recommendation on improving communication and information exchange between management and staff and investing in a transparent human resources policy had been partially followed.

The Council was unable to conclude in 2017 that, following the publication of the Council report in 2014, there were plans to follow up the recommendation. However, with the transition from the tasks to the KPSM, development seemed to have accelerated. The Council noted, however, that the KPSM's personnel policy had not been formalised and that communication remained an ongoing issue within the police force.

Findings 2024

Communication and information exchange

Interviewees from all layers of the IBPS organisation indicate that communication and information exchange between management and employees of the IBPS has not been good for about 4-5 years. There were some attempts to improve this situation during that period, but due to multiple management changes, they petered out. The communication and information exchange between the management and the IBPS employees is perceived by the interviewees from the middle management and the workplace as selective and mainly consists of top-down information.

A new IBPS director has recently been appointed and initiatives are being taken to improve communication between management and employees in the current situation. However, this can always be better. The use of e-mail for informational purposes, and weekly consultations with middle management members, among other things, is being done. This is done online or in person. Steps are also being taken to build an intranet to ensure that information exchange takes place in a (more) consistent manner.

The lack of sufficient policy staff within the IBPS is an issue. In the current situation, it is almost impossible to develop and launch policies that are necessary to achieve improvements and ensure their continuity.

According to several middle management interviewees, communication at middle management level is reasonable and weekly meetings are held with coordinators (airport, ports and KMar). Bi-weekly meetings are also held between coordinators and their team leaders.

Transparent personnel management

No personnel policy for the IBPS has yet been drawn up in the current situation. Interviewees from the Ministry and IBPS management indicate that an inventory of matters requiring attention is currently taking place. On the basis of prioritisation, work will then be done to improve the situation. The new function book of the Ministry of Justice includes two HR functions. However, discussions with the HR department of the Ministry on this matter still need to be held, in particular on the implementation of the HR functions at the IBPS.

Several interviewees within the IBPS indicate that it is completely unclear to them what their legal position is in the current situation. Questions about this are always answered by management by referring to the media reports on the new function book and the commitments made by the Minister on the national decrees in preparation. Formal communication or concrete information from the department is often lacking. See also sections 3.2 and 3.3.

For the majority of those interviewed, the current staffing policy is confusing, unclear and not transparent. They believe that the existing situation creates an uncertain working environment because employees do not know their legal status and are in uncertainty about the future. Many of the IBPS's employees do not think that asking critical questions is appreciated.

According to most interviewees, the current situation is mainly due to the many changes in management and the equally increasing changes in visions and intentions of recent years. It is unclear to most of the staff what and why things happen as they do.

Assessment

The Council notes that the recommendation **has still not been followed**. Communication and information exchange between management and employees has needed improvement for several years. The average employee does not have a sufficient idea of what the organisation stands for and what the IBPS wants to grow towards in the coming years. Many employees experience uncertainties with regard to their legal status and consider current personnel policy as not transparent, confusing and unclear.

The Council notes, based on the inspection, that communication between staff and the IBPS's middle management is structured and relatively good. The Council considers that a stable and experienced middle management, together with the recent filling of the critical post of Director IBPS, which has been open for some time, is a prerequisite for improving communication and information exchange between management and staff.

3.11 Training

A1.I: Invest in the training of the employees, so that the focus of border control is not almost exclusively on document checks, but also suspicious situations and suspicious behaviour are recognised more than before.

The recommendation has been classified by the Council in its database as 'training'.

A8: Free up resources for additional training. Start by offering further training for the Dutch language for those who need it. Provide structural training and development opportunities for the entire staff.

The recommendation has been classified by the Council in its database as 'training'.

State of affairs 2017

In the 2014 report, the Council recommended investing in the training of staff so that the focus of border control is not so much on document control but also on suspicious situations and suspicious behaviour more than before. In 2017, it was found that there had been training for staff. In the view of the then management, too little was done by the organisation and too little was invested in it.

Moreover, due to a lack of knowledge of the Dutch language, it was difficult for many employees to understand the regulations and to carry out their profession competently and independently.⁴⁸ Although training had been organised, the Council also concluded that staff could not fully develop their capabilities. In addition, more needed to be invested in knowledge of the Dutch language in order to be able to comprehend the necessary professional knowledge and regulations. This recommendation on investing in employee training was partially followed.

Findings 2024

Training program

The IBPS started a training program in 2020, based on a training curriculum developed by the IBPS, KPSM and KMar⁴⁹. The Council received this training program, which is called 'From Entry Level Competency to Proficiency'. The inspection shows that in 2024 some of these ambitions were not (sufficiently) achieved.

⁴⁸ Reporting Transfer of Border Control & Asset Control from IBPS to KPSM, 6 January 2017

⁴⁹ Training curriculum 'From Start competence to professional competence', Brigade KMar Carib/OTCKMAR, 28 May 2021.

The KMar has given several courses in recent years, including the so-called DOC-1 (all IBPS'ers), DOC-2 (7 IBPS employees) and DOC 3 (1 IBPS employee) training courses. These are different levels of document recognition training. Furthermore, the training 'practitioner' (5 employees), an executive training course (5 employees) and a training in drafting an official complaint (all IBPS'ers) have been given.

A course 'predictive profiling' was also organised by the KMar for IBPS personnel working in border control at the end of 2022/beginning of 2023. This was an *e-learning* program which was followed by the relevant IBPS staff with a final test.

The BOA (Special Investigative Officer) training started in mid-2023 has ceased and the Ministry's training coordinator who was involved in this project is no longer employed by the Ministry. A Dutch language course was also started in 2023 for employees of the IBPS. But this too was stopped prematurely because of organisational and financial problems.

In particular, a lack of guidance and coordination and the lack of a training environment (facilities, time and involvement) have led to insufficient achievement of the original objectives, according to interviewees. Team leaders and employees have generally not been able to develop or have not developed sufficiently.

Current situation

According to various interviewees of the IBPS and the KMar, on the basis of the protocol on strengthening borders, there is an agreement with the KMar to provide training at the IBPS. The ultimate aim is that the KMar should no longer be required to provide training, but that the IBPS itself should be able to do so. The aim is also that the training will be structured rather than ad hoc.

Interviewees of the IBPS and the KMar indicate that it is currently awaiting new requests from the IBPS to the training coordinator of the KMar and the availability of finances. In principle, there should be a budget available at the Ministry of Finance, which has not yet been used.

This concerns funds made available from the Netherlands then under the regulation on strengthening border control and funds that were paid into the 'Crime Prevention Fund' under the so-called country package and the protocol on strengthening border control.

According to the Coast Guard, also within the local information hub of the Coast Guard and the Border Info Group, there is room for investment in cooperation, training and the enhancement of specialist knowledge on the basis of the same funds.

Basic training

A number of IBPS interviewees draw attention to a bottleneck concerning them. This concerns the fact that two classes started basic training for new IBPS staff in 2018 and 2019 but never completed this training. The interviewees indicate that it is necessary to complete this training to enable employees to perform their job properly and safely.

According to interviewees, the training situation outlined still exists. Class cancellations, cancellation of training modules, lack of sufficient uniform clothing and inadequate (study and practice) supervision are some examples.

Apart from the fact that a lack of training in the daily work is considered to be a hindrance, there are also consequences for personal safety. Due to uncompleted education and other training, some of these IBPS employees perform their duties inadequately trained and, due to the lack of certification, also unarmed and without other protective equipment.

Assessment

Invest in the training of employees, so that the focus of border control does not focus almost exclusively on document control but also on suspicious situations and suspicious behaviour are more recognised than before (A1.I).

On the basis of the inspection, the Council concludes that since 2020, investments have been made in training for IBPS staff. Unfortunately, despite the successful completion of several courses in this training program, this is not true of a (large) portion of the program. The Council notes that staff of the IBPS have generally not been able to develop or develop too little in recent years and therefore considers this recommendation to be **partially followed up**.

Free up resources for additional training. Start by offering further training for the Dutch language for those who need it. Provide structural training and development opportunities for all personnel (A8).

Since 2020, funds have been released for additional training from then under the regulation on strengthening border control and from the so-called 'Country packages'. As indicated above, some of these objectives have not been achieved, in particular due to a number of organisational and logistical shortcomings. The structural integration of training has therefore started, but it still needs to be completed. The Council notes that the recommendation **has been partially followed**.

The Council notes that there is currently stagnation in the training process and that it is a question of waiting for new initiatives from the IBPS and the availability of finances. The Council also expresses its concern that two training classes for newly recruited staff were launched in 2018 and 2019, but that these courses were never fully completed. The Council considers it irresponsible that new staff should be sent into the 'working field' in this manner.

It goes without saying that the Council considers it necessary that this group of employees be able to carry out their duties properly and safely by means of additional education and training as soon as possible. The Council also continues to consider it essential that there should be structural resources and opportunities for training and development opportunities for IBPS staff.

The inspection shows that there should still be financial space available for investment in cooperation, training and the enhancement of specialist knowledge. These are funds made available by the Netherlands then under the regulation on strengthening border control and the so-called Country packages. The Council therefore believes that the Minister should take initiatives as soon as possible to locate these funds and allocate them to what they were intended for.

3.12 Accountability of results and figures

A1.m: Improve accountability of results and relevant figures to the Minister of Justice on a structural basis.

The recommendation has been classified by the Council in its database in the category of 'annual plans and annual reports'.

State of affairs 2017

There was room for improvement in the justification of the results and relevant figures. The IBPS reported to the Minister of Justice, but on an irregular basis and not through an annual report. The recommendation was not followed.

Findings 2024

According to all interviewees, there is neither internal nor external accountability of the operations and results of these operations at the IBPS. Interviewees also indicated that there have been no written reports for years and that annual plans and annual reports are missing.

The many changes in management in recent years have been the cause of this to a large extent, according to interviewees. The IBPS keeps the Ministry informed of the day-to-day operation. The IBPS intends to once again draw up annual plans and reports as justification for the operations.

Assessment

The recommendation has **not** been **followed**. On the basis of the inspection, the Council notes that there is still no improvement in the IBPS's accountability structure to the Minister. The accountability of performance and the public funds spent must be given a structural basis on the basis of legal provisions, so that Parliament too is able to carry out its monitoring task. The Council urges the Minister to make concrete and enforceable agreements with the IBPS.

3.13 Integrity policy

A1.n: Promote a consistent and transparent integrity policy at the admission organisation, actively monitoring compliance with codes of conduct. Ensure that the policy is followed in practice.

The recommendation has been classified by the Council in its database into the category 'personnel policy'.

The recommendation consists of two parts, namely the monitoring and compliance with a consistent and transparent integrity policy.

State of affairs 2017

In 2014, the Council considered that integrity violations could be facilitated by a clustering of competencies, as was the case at the time at the IBPS. The Council also noted that the IBPS had an integrity policy on paper, but that the staff at the workplace were not aware of it. They also did not know the confidential adviser mentioned in the policy to whom possible breaches of integrity could be reported. The Council concluded in 2017 that this situation was still unchanged and stated that an active and alert attitude on the part of management at all levels was needed to improve the situation. The recommendation was not followed.

Findings 2024

In the current situation, according to several interviewees, there is no integrity policy, but things are developing. For example, according to the interviewees of the Ministry, there is the development of a *Code of Conduct*⁵⁰ for the staff working at Justice. According to interviewees, the draft of the framework for this has been finalised and any department of the Ministry can further develop a *Code of Conduct* for its own services on the basis of this framework. The Council asked the Ministry to receive a copy of the Framework draft during its inspection. However, the Council did not receive a copy by the end of the inspection.

There is still a lot to be done at the IBPS itself in relation to the promotion of a consistent and transparent integrity policy, but according to some interviewees the basis and intention for this is there. In the current situation, within the IBPS, various ad hoc and informal integrity-related processes are used to prevent undesirable behaviour based on informal organisational values. An example of this is maintaining the working hours, according to an interviewee.

In general, there is currently no enforcement of integrity policies that actively enforce codes of conduct. Rules exist based on, for example, the LMA and are enforced where possible by team leaders and coordinators. The lack of underlying policies or structures can sometimes make this difficult. Monitoring of integrity is not structured and often depends on how important

⁵⁰ On 30 August 2024, after the Council's period of inspection, a code of conduct for government officials was published by the Sint Maarten government in the National Gazette. <https://www.sintmaartengov.org/Documents/National%20Gazette/23%20Landscourant%2030%20augustus%202024.pdf>

the manager thinks this topic is. Also, there are hardly any consequences for violations due to the lack of official policies.

Assessment

The recommendation to promote a consistent and transparent integrity policy at the IBPS and to actively monitor compliance with codes of conduct and policies in practice has **not** been followed.

An active integrity policy is important, according to the Council in 2014. In view of the large number of years since then, the Council considers that more than ever an active and alert attitude on the part of management at all levels is required.

In the view of the Council, an integrity policy should be developed, written and maintained. Procedures and agreements should be actively and regularly brought to the attention of employees. Practice and dilemma training is important, and integrity violations must be addressed clearly, consistently and transparently. The Council believes that a more active effort should be made on such an important issue by hastening to adopt and implement the policy and urges the minister to prioritise this issue.

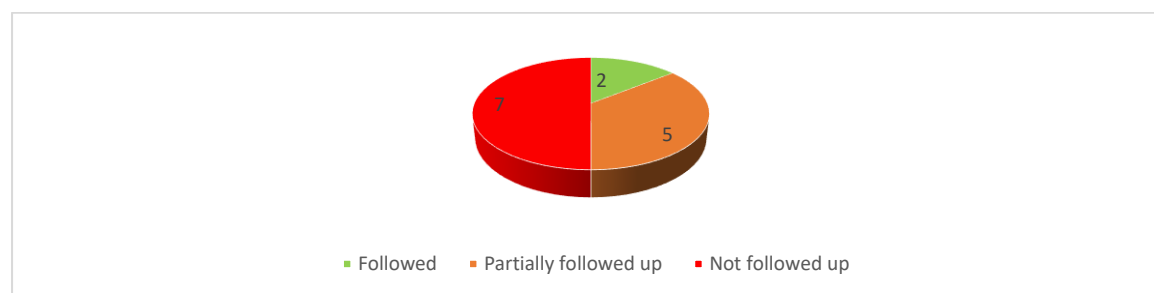
3.14 (Schematic) overall analysis of border control of the movement of persons

Introduction

In 2014, the Council published an inspection on border control of the movement of persons in Sint Maarten and made 14 recommendations for improvement. The Council then carried out a follow-up inspection in 2017 to assess the follow-up to the fourteen recommendations issued in 2014. This inspection showed that out of the 14 recommendations, five recommendations were partially followed up and two were fully followed up. Seven recommendations were not addressed.

The overall compliance rate was therefore **32.1%**⁵¹ in 2017. In its follow-up inspection, the Council therefore made one recommendation to follow up the recommendations which had not yet been (fully) adopted and six new recommendations.

Table 7: Degree of follow-up of recommendations border control of the movement of persons 2017

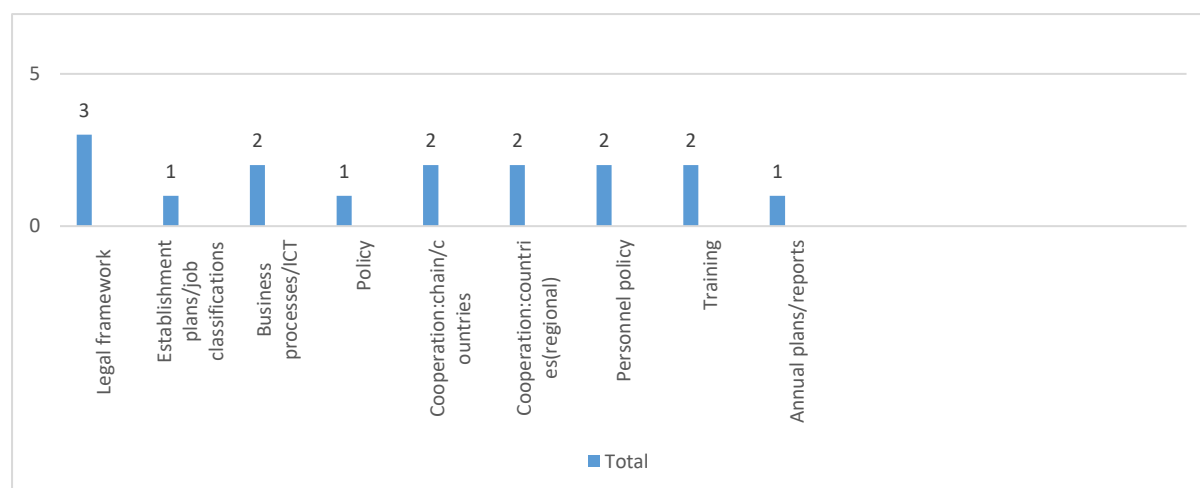


The tasks relating to border control of the movement of persons and the control of foreigners in Sint Maarten were laid down by the IBPS in 2010. In 2016 these tasks were transferred to the KPSM, to be transferred back to the IBPS in 2021. Because of the latter change, this underlying inspection has considered the new situation from the perspective of the IBPS or its recommendations have been disregarded. This has affected a number of recommendations from the 2017 inspection, which means that the total number of recommendations in this underlying follow-up inspection in 2024 is 16.

⁵¹ The compliance rate as an indicator is calculated by assigning a ½ point to each followed recommendation 1 point, each partly followed recommendation and no points to an unfollowed recommendation. Then the number of points awarded is divided by the total number of recommendations and multiplied by 100 to achieve the compliance rate.

These remaining 16 recommendations from 2017 have been broken down into categories by the Council in its database, at its own discretion, in order to provide a better understanding of the individual recommendations. The classification used per recommendation in this chapter refers to the scheme set out in paragraph 1.4, where the capital letter 'A' stands for 'recommendation'. The breakdown is indicative and is as follows: legal framework (A1B, A1d, A1E), establishment plan/job classifications (A1c), business processes/ICT (A1f, A5), policy (A1g), chain/country cooperation (A1H, A6), country/regional cooperation (A1i, A7), personnel policy⁵² (A1K, A1n), training (A1l, A8) and annual plans/reports (A1M).

Table 8: Number of recommendations per category



State of affairs Follow-up 2024

On the basis of the remaining recommendations, the state of affairs in 2024 is that four recommendations have been followed up, six recommendations have been partially followed up and six have not been followed up. The *compliance* rate is therefore **40.6%**, but the new distribution takes into account that the percentage cannot be compared well with the previous rate since there is no longer an equal number of recommendations.

The Council presents in the following three tables the state of affairs as regards the follow-up to the recommendations, a comparison of the state of affairs in 2017 and 2024 and the degree of follow-up by category.

Table 9: Extent of follow-up of border control recommendations 2024

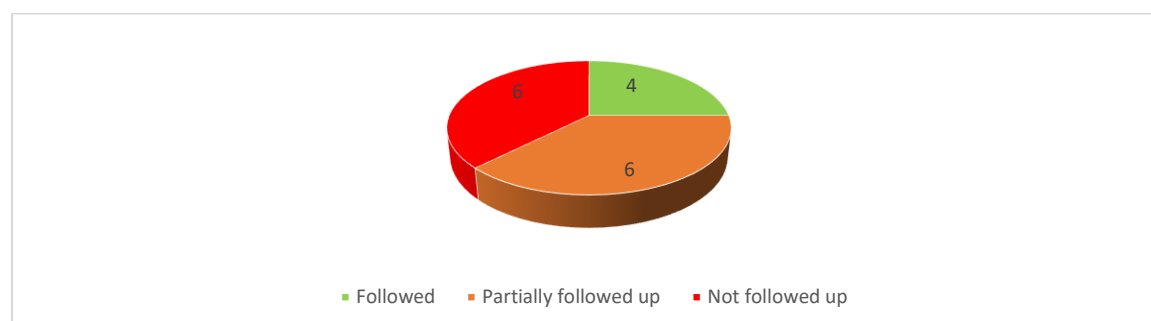


Table 10: Extent of follow-up of Border Control Recommendations by Category 2024

⁵² This recommendation was included in the Border Control Review Report (p.33) of 2017 but was not included in the Recommendations Summary (p.12) of the report by mistake.

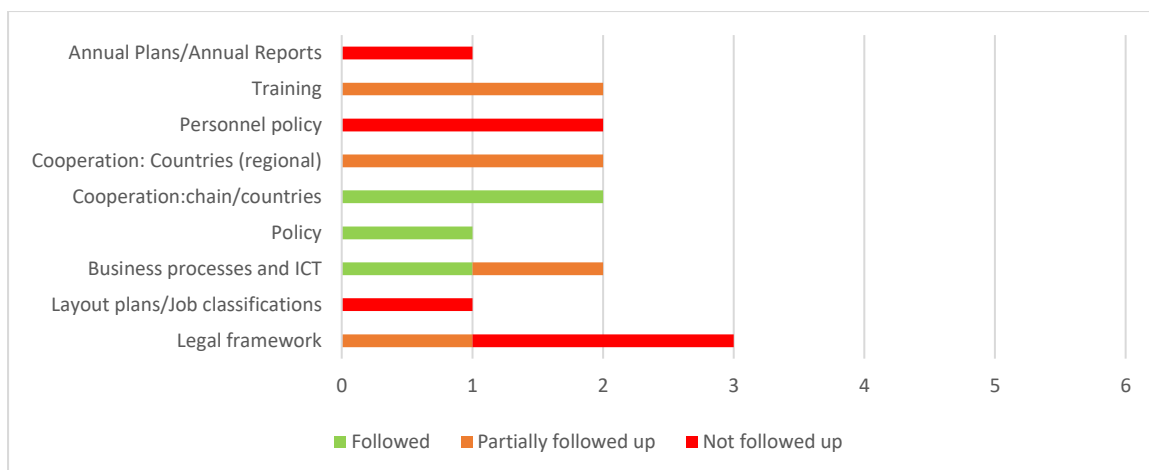
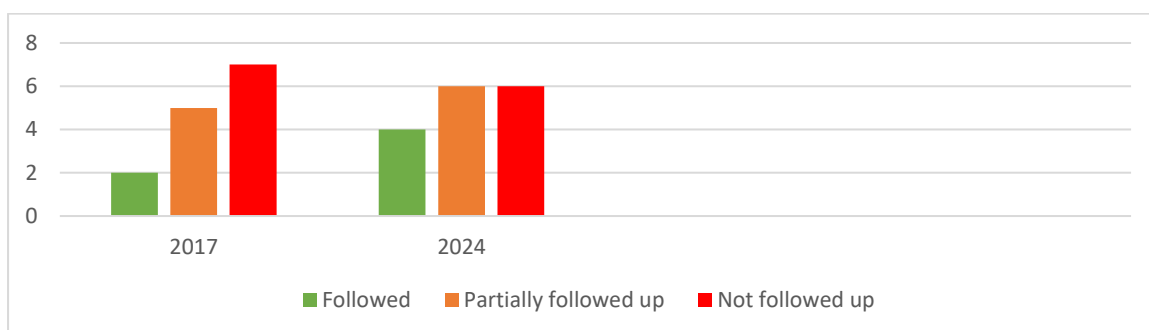


Table 11: Extent of follow-up of border control recommendations 2017-2024



It follows from the tables that little progress has been made in the degree of follow-up to the recommendations given that the compliance rate has increased from **32.1%** to **40.6%**. In the business process/ICT (structural investment ICT), policy (centering entry control traffic), chain/country cooperation (cooperation and information exchange) categories, the Council notes progress.

The Council also notes, as it did during its 2017 review inspection, that recommendations in the categories: legal framework (legal position decision, synchronisation of mandates/decision-making practice and synchronisation of admission decision/practice), establishment plans/job classifications (placement of staff), cooperation countries/regional (cooperation of French authorities), personnel policy (integrity policy IBPS), training (training and investment) and annual plans/reports (results and figures) are still stagnant. There is regression in the recommendation under the HR category (internal organisation IBPS).

Previous Council reports have consistently shown that the lack of finance and capacity are structural bottlenecks for follow up on recommendations. A number of recommendations (legal framework, human resources policy, annual plans/annual reports) are without primary financial implications and the Council considers that a solution should be sought at least in the shortest possible time.

For the other recommendations, there are issues that require finance and, particularly, capacity for follow-up. The Council is aware that these issues cannot be resolved in the short term. However, the Council is asking the Ministry to look for ways of resolving this issue in the shortest possible time.

Recommendation and monitoring

The Council's follow-up inspection provided an overview of the state of affairs regarding the follow-up to the recommendations in the framework of border control. On the basis of the above, the Council's recommendation to the Minister of Justice is: *Implement the 12 Council recommendations which have not yet been addressed (in full) and make available the necessary resources as soon as possible.*

The table below shows the state of affairs regarding the follow-up to the recommendations for the Border Control Report in St Maarten.

Table 12: State of affairs recommendations border control, 2024

| No. | Recommendations | Review 2017 | Review 2024 |
|------------|---|--------------------|--------------------|
| 1. | <i>Follow up and implement the recommendations of the Law Enforcement Council that have not been (fully) followed (see diagram below).</i> | | |
| | To the Minister of Justice | | |
| 1.a | Legally assign the task of border control to a single authority and also regulate the powers granted to the border control employees. | Followed | -- |
| 1.b | Make haste with the adoption of the legal status decision for the IBPS. | Not followed | Not followed |
| 1.c | Subsequently, place the employees in the organisation on the basis of the legal status decree. | Not followed | Not followed |
| 1.d | Synchronise the mandate in the Mandate Decree and the decision-making practice regarding refusal of admission. | Not followed | Partially followed |
| 1.e | Synchronise the 1985 Admission Decree and the practice with regard to places where persons may disembark, and access control takes place. | Not followed | Not followed |
| 1.f | Make the ActBMS border control system operational again in the short term. | Not followed | Followed |
| 1.g | Consider whether the choice to centralise access control for maritime traffic at the Anguilla dock in the Simpson Bay Lagoon is wise in the long term, also in view of the presumed low willingness to register and the recent policy of intensifying maritime control. | Partially followed | Followed |
| 1.h | Promote cooperation and exchange of information between the services and organisations involved in border control and inspection and between the countries of Sint Maarten, Curaçao and the Netherlands, parties to the ORVK. | Partially followed | Followed |
| 1.i | Work with the French authorities to improve border control in the Simpson Bay Lagoon. | Partially followed | Partially followed |
| 1.j | Evaluate the integration of border control into the IBPS, in line with the proposal of the Progress Committee. | Followed | -- |
| | To the Minister of Justice with regard to the Immigration and Border Protection Services: | | |
| 1.k | Improve communication and information exchange between management and border control staff and invest in transparent personnel policies. | Partially followed | Not followed |
| 1.l | Invest in the training of the employees, so that the focus of border control is not almost exclusively on document checks, but also suspicious situations and suspicious behaviour are recognised more than before. | Partially followed | Partially followed |
| 1.m | Improve the accountability of the results and relevant figures to the Minister of Justice on a structural basis. | Not followed | Not followed |
| 1.n | Promote a consistent and transparent integrity policy at the admissions organisation that actively monitors compliance with codes of conduct. Ensure that the policy is adhered to in practice. | Not followed | Not followed |
| 2. | <i>In the short term, ensure that the transition from the border control tasks and immigration control to KPSM can be followed in full. Take the report as a starting point: Transition G&V from the IBPS to KPSM.</i> | New | Disregarded |
| 3. | <i>Subsequently, place the employees at the KPSM on the basis of the legal status decree.</i> | New | Disregarded |
| 4. | <i>Revoke the Mandate Decree to the IBPS. Arrange the mandate in accordance with the new practice. (included at 1d)</i> | New | Disregarded |
| 5. | <i>Provide a structural investment in technological applications of a modern and sustainable border management system as soon as possible.</i> | New | Partially followed |
| 6. | <i>Maintain the practices to further promote cooperation between services and countries. Make further arrangements for the (interregional and national) sharing of information. In addition, pay attention to cooperation within immigration control in general.</i> | New | Followed |

| | | | |
|----|--|-----|--------------------|
| 7. | <i>Maintain practices for intensifying cooperation with the French authorities. Keep in mind the staff shortage on both sides and the integral importance of the entire island. Where necessary, bottlenecks in the cooperation should be forwarded for consideration at the Kingdom level.⁵³</i> | New | Partially followed |
| 8. | <i>Free up resources for additional training. Start by offering further training for the Dutch language for those who need it. Provide structural training and development opportunities for the entire staff.</i> | New | Partially followed |

⁵³ This recommendation was included in the 2017 Border Control Review Report (p.33) but inadvertently not listed in the recommendations summary (p.12) of the relevant 2017 report.

4. State of affairs admission and expulsion

4.1 Admission and expulsion of foreigners in Sint Maarten

The Council describes in this chapter the findings regarding the follow-up to the 2019 recommendations. The Council chooses to do this thematically. For each recommendation⁵⁴, the Council briefly describes the state of affairs in 2019, followed by the state of affairs in 2024 and its assessment thereof. This chapter concludes with an *overall* analysis of the state of affairs regarding the follow-up to the recommendations in the context of border control of the movement of persons.

Successively, the following topics are discussed: labour market/admissions policy, admissions policy, drafting/publication policy, synchronisation decision and expulsion policy, training in falsifications/creation of document database.

4.2 Labour market studies, Labour market and admission policies and implementation of admission policies

A1A. In collaboration with the Ministry of VSA, have a labour market study carried out into the required quality and quantity of employees in Sint Maarten and on the basis of this, in consultation with the Ministry of VSA, draw up a labour market and admission policy for foreigners.

The recommendation has been classified by the Council in its database under the category 'research and crime picture'.

State of affairs 2019

The Ministry of Justice or the IBPS did not have a labour market study carried out in cooperation with VSA on the necessary quality and quantity of workers in Sint Maarten. As a result, the related follow-up actions included in the two recommendations had not taken place either. This involved the drafting of a labour market (responsibility VSA) and admission policy (responsibility Minister of Justice) for foreigners and the monitoring of their implementation and enforcement. This recommendation was not followed in its entirety.

Findings 2024

The inspection shows that neither the Ministry of Justice nor the IBPS, in cooperation with VSA, commissioned a labour market study on the necessary quality and quantity of workers in Sint Maarten. According to IBPS interviewees, this is not planned either.

In addition, it appears that two reports were published in 2023 on a number of recent studies on the labour market in Sint Maarten. These reports, entitled 'Labor Market Analysis Sint Maarten'⁵⁵ and 'Labor and Social Security in Sint Maarten'⁵⁶, include an extensive Labour market analysis by Sint Maarten, as well as an inspection into labour market reforms in Sint Maarten.

These inspections were carried out respectively on behalf of the Government of Sint Maarten (Ministry of VSA) / the National Recovery Program Bureau) and on behalf of the Government of Sint Maarten, Ministry of the Interior and Kingdom Relations & Ministry of Social Affairs and Employment.

An interviewee from IBPS management indicates that around 2018 or 2019 there was some kind of intention to achieve an integrated, coherent approach to enforcement tasks. However, this intention has never evolved.

⁵⁴ The classification used per recommendation in this section refers to the scheme set out in paragraph 1.4, where the capital letter 'A' stands for 'recommendation'. One of the recommendations had already been followed up in 2019 (A1.c). Therefore, only the state of affairs on the recommendations not followed (A1.a, A1.b, A1.d and A1.e) and the partly followed recommendation (A1.f) will be presented below.

⁵⁵ <https://www.sintmaartengov.org/Documents/Reports/LabourMarketAnalysisSXM.pdf>

⁵⁶ <https://www.seo.nl/publicaties/labor-and-social-security-in-sint-maarten/>

In the current situation, there is no joint labour market and admission policy for foreigners. No further information was received from either the Ministry or the IBPS on the questions raised during the inspection concerning the causes of this stagnation.

Assessment

This recommendation has **not** been **followed** in any form. Although the recommendations are addressed to the Ministry of Justice, they require some cooperation and willingness from both Ministries (Justice and VSA). As in 2019, the Council considers that the involvement of the Ministry of Justice is indispensable and necessary in order to be able to collect the data specifically relevant to justice. The Council considers that the Ministry of Justice should, more than before, make efforts to have such a labour market study carried out. For example, the Minister could consider taking the studies already carried out and described above as a basis for drawing up labour market and admission policies for foreigners. This policy can therefore facilitate the (further) development of coordination between the different ministries and organisations involved in the admission and residency of foreigners.

4.3 Admission policy

A1.b. Ensure that the admission policy is followed and enforced and include the results of the study in cooperation with the Ministry of VSA so that at least the social and economic growth, security and the legal order of Sint Maarten are protected.

The recommendation has been classified by the Council in its database under the category of 'enforcement and compliance'.

State of affairs 2019

Following the failure to follow the recommendation on the labour market study, the Council concluded that the closely related recommendation on monitoring and enforcing admission policies, taking into account the results of the study, had not been followed up either.

Findings 2024

As indicated, this recommendation is closely linked to recommendation A1A. The findings there are also relevant for this recommendation.

Cooperation

According to an interviewee, it is the intention of the IBPS to strive for an integrated, coherent approach to enforcement tasks based on the alignment of procedures and practices and the exchange of information between ministries. It is clear that there is still a lot to be done in this area in order to achieve this, but it is in everyone's interest to do so.

A plan of action has been developed in the field of border-related cooperation that can serve as a basis for this. The Council has requested to receive this plan of action but did not receive it within the time frame of the inspection. Several interviewees indicate that a more structural approach to the enforcement chain within immigration policy can only be achieved by working together.

The failure of several initiatives in the recent past shows that this is in practice tricky. As an example, several interviewees mention the project *One Stop Shop*. This project ran from February to October 2023. Individuals who worked illegally at a company were given the opportunity to speed up their application for a work and residence permit. IBPS personnel were selected to work with VSA personnel in the Labour Department issuing work permits and residence permits.

However, according to interviewees, the entire project was plagued by a chaotic and unclear organisational set-up. There was a lot of mistrust between the departments and the people involved. There was no clear hierarchy and division of responsibilities. Everyone protected their own 'shop' and the collaboration and information exchange between the different

departments was minimal. In the opinion of the interviewees, the project was very useful and necessary, but in the end, little has been achieved from the original objective.

Assessment

The Council has already concluded that the recommendation on the labour market study has not been followed up. The Council also concludes that the closely related recommendation on the monitoring of effective implementation and enforcement of admission policies and taking into account the results of the study **has not been followed up** either. There is still no joint policy.

As it stands, the IBPS still does not review its own policy on whether a substantial Sint Maarten's interest is served by admitting the foreigner. However, the IBPS has a responsibility to maintain its own policy. The IBPS thus leaves implementation of an important part of its own policy to the Ministry of VSA.

The Council considers this to be incorrect and extremely undesirable, because it is important that the Ministry of Justice, too, has greater control of the admission of foreigners to work on the basis of its own responsibility. This should be done proactively.

There is still a need, even ten years after the Council's recommendation on this matter, for a study of how many workers are needed in Sint Maarten and what occupational groups, with which education and skills, are required, this in relation to the quantity and quality of the labor force available in Sint Maarten.

On the basis of such a study, a labour market and admission policy for foreigners should be established in cooperation with the Ministry of VSA, with the social and economic growth, security and the legal order of Sint Maarten (as the current policy aims) being paramount. In this context, it is of course necessary to ensure that this admission policy is effectively followed and enforced.

4.4 Drafting and publication of policies

A1.d. Put unwritten policies in writing and publish them.

The recommendation has been classified by the Council in its database under the heading 'policy'.

State of affairs 2019

The Ministry of Justice indicated that the Minister intended to update and publish the current policy as set out in the Guidelines (dated 2012). The latter is partly because the judiciary⁵⁷ had already accepted the Guidelines as a policy and to promote legal certainty, according to the Ministry. According to the IBPS, changes were made to the existing working procedures if necessary. Since the Council report in 2014, two internal work instructions have been written by the IBPS.

In May 2016, the IBPS had prepared a work instruction⁵⁸ on the conditions for eligibility for a continued stay permit. This work instruction was subsequently revised in May 2017. Both instructions have not been published.

The IBPS indicated that cooperation with its own ministry or other ministries to draft policies depended on the subject, its complexity and its responsibilities. The Council assessed the recommendation to write and publish unwritten policies as not followed. The situation as established in 2014 was still applicable.

⁵⁷ See for example: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:OGHACMB:2018:237>.

⁵⁸ 'Work instruction Continued stay' of 12 May 2016 and memo 'Conditions of authorisation Permit Forced stay' of 15 May 2017 made available by the IBPS via email on 11 October 2019.

Findings 2024

Incompleteness of legislation and regulations

According to the interviewees of the Ministry, the existing legislation and regulations, as well as the guidelines of the Minister of Justice, form the basis for the implementation and enforcement of the admission policy. Not everything is regulated and in practice, therefore, informal internal policies are often used to carry out the day-to-day work.

The intention is certainly to bring about and to lay down a comprehensive adaptation of the applicable regulations and decrees. Preparations for this process have also been started, including the design of a draft admission's manual. The lead time of this process is not yet known.

All IBPS interviewees acknowledge that there is still an established line of conduct that has not yet been written and has therefore not been published. In recent years, inter alia, ministerial decisions in addition to the decrees have started to establish a written policy and to reconcile the requirements of legislation on the one hand with the decision-making and expulsion practice on the other.

The provision of information via the website and the Internet has also been improved to provide clear information to people. However, the situation is not yet ideal and there is still a great deal to be gained, particularly in the areas of updating and synchronising legislation and decision-making and expulsion practices.

Established line of conduct

The online *Customer Relationship Management* (CRM) system (see also Section 4.5) makes it clear at the beginning which documents are required for which request. However, once the steps of the application process have been followed, it requests that other documents be uploaded that do not coincide with what was stated at the beginning. And documents such as an employer's declaration, original birth and marriage certificates are still being requested.

Furthermore, interviewees point out that this practice also exists in other departments within the government, leading to consequences for the IBPS. As an example, in this it is mentioned that the Department of Social Affairs requires that persons who request their services with an older version (no photo, larger size) of a valid residence permit have it updated. These people end up in the (already understaffed) department of the interviewees.

Assessment

The Council considers that this recommendation has **not been followed**, as unwritten policies have still not been drafted in accordance with the law and have therefore not been published. The Council considers, on the basis of the general principles of good governance, that the public authorities should be transparent and that it should be made known what it is they are doing.

This is important in order to promote equality of justice and the sustainability of policies. Drafting and publishing policies also promotes the integrity of the application and decision process, which prevents the policy from being challenged by law.

4.5 Synchronisation of decision-making and expulsion with legislation and policy.

A1.e: Reconcile the requirements in the legislation, policy and application form on the one hand and the decision-making and expulsion practice on the other.

The recommendation has been classified by the Council in its database under the category of 'enforcement and compliance'.

State of affairs 2019

The Council's inspection showed that there were still discrepancies between legislation, policy and the application form on the one hand and decision-making and expulsion practices on the other. Some documents were still included as required in the forms, even though this was not a legal requirement. The recommendation to reconcile the requirements of legislation, policy and application form with the decision-making and expulsion practice was not followed in 2019.

Findings 2024

Several interviewees indicate that there are still areas for improvement in the synchronisation of legislation, policies and their implementation in practice. In recent years, however, a start has been made on drafting unwritten policies and reconciling the requirements of legislation on the one hand and the decision-making and expulsion practice on the other. Among other things, ministerial decisions have been taken in addition to the Guidelines. This has not yet been followed. It is hoped that the recent strengthening of the legal capacity at the ministry's staff bureau can play a role in this.

Customer Relationship Management System

Since 2022, the Admissions & Residency department has been working with a new online *Customer Relationship Management* (CRM) system. Customers can now submit applications and make payments online. The system allows documentation to be uploaded to the application for a period of 6 weeks. If the request has not been followed and paid after that time, it is automatically deleted from the system.

The intake department will review the request submitted and send an email to the requestor if necessary for more information. If the request is correct, the system will send a 'proof of request' to the requesting party. After this, the request will be forwarded to the advice department for further processing. The application is then forwarded to the compliance department, which carries out a final check before a decision is made by the director or the Minister.

The online system clearly indicates which documents are required for which application. In practice, however, it has been found that not every applicant (person) understands or is aware of what kind of application they need to fill in. As a result, they sometimes complete an incorrect application procedure and thus actually make an incorrect application. Several interviewees also indicate that the system is plagued by various faults that cause problems.

Assessment

This recommendation has **not been followed**. The Council notes that in recent years, inter alia by ministerial decrees supplementing the Guidelines, a start has been made on setting policy in writing and reconciling the requirements of legislation on the one hand and decision-making and expulsion practices on the other.

However, the Council's inspection shows that there are still discrepancies between legislation, policy and application form on the one hand and decision and expulsion practice on the other, more than five years after the review.

The Council notes that the IBPS's Admissions and Residency Department has been working since 2022 with a new online *Customer Relationship Management* system where foreigners can apply for their residence permit and make payments online. The inspection shows that the application system has been plagued by malfunctions since its introduction and that the application system is not very user-friendly.

This situation can in practice seriously damage the application procedure of the persons concerned, with all the consequences that this entails. The Council believes that this should be taken into account and calls on the Minister to consider a solution.

Here too, the Council believes, on the basis of the general principles of good administration, that the public authorities should be transparent, that it should be known what they are doing and that the applicant should have confidence in the proper handling of the application.

4.6 Education falsifications and building documents file

A1.f Invest in the knowledge of the employees on recognising falsified documents and make use of the knowledge available in Sint Maarten (1) and investigate the possibilities for a database containing the most common documents from the most common countries of origin (2).

The recommendation has been classified by the Council in its database into the category of 'training'.

This recommendation consists of two parts, namely training in falsifications and common documents database.

State of affairs 2019

Since 2014, the IBPS has reported that several training sessions have taken place in areas such as document management and archiving for employees. When there were new developments in document counterfeiting, staff followed refresher courses as well as training.

According to the IBPS, falsifications were mainly revealed at the Civil Registry and in this context the verification of authenticity of documents was also mainly carried out there. The judicial chain partners were asked for help when there was a suspicion of a falsification, according to the IBPS. Furthermore, the IBPS indicated that there are databases, but that they do not have access to those databases, which related to identifying the most common types of false documents from the most common countries of origin.

Findings 2024

Investment in knowledge and training

The inspection shows that in recent years there has been investment in several training courses for the IBPS staff, in particular in the field of document recognition and border control. Referring to what is already described in paragraph 3.11, several training courses in the field of document recognition and falsification have been given by the KMar in recent years, including the so-called DOC-1 (all IBPS'ers), DOC-2 (7 IBPS employees) and DOC 3 (1 IBPS employee).

Furthermore, an MOU has recently been closed with the Training Institute Law Enforcement & Safety Care in Curaçao⁵⁹. And there is ongoing consultation on the fulfilment of training needs within the Ministry of Justice in general and also for the IBPS.

On the basis of requests from the IBPS, in addition to the already existing training offer, the KMar can also provide expertise support and training for the IBPS department dealing with the admission/expulsion of foreigners.

As already indicated in this report, it is currently awaiting further training requests from the IBPS to the KMar and the availability of finance.

There is no doubt that the IBPS still needs to do something about training and knowledge development, and several interviewees indicate that they have not, if any, received training for a long time. The IBPS leadership also indicates that it would like to make progress in this area.

⁵⁹ <https://www.sintmaartengov.org/news/pages/Honorable-Minister-of-Justice-Anna-E-Richardson-Explores-Collaborative-Initiatives-with-ORV-Police-Academy-During-Visit-to.aspx>

According to what is stated in the training curriculum 'From start-up skills to competent skills', training and guidance has also been developed for securing this knowledge within the IBPS. For this purpose, practice leaders, practice masters and mentors have been trained.

They come from the IBPS and can, after training as an experienced employee, guide the less experienced employee to a higher level using, for example, a work and task book and counselling sessions.

Falsidesk and database

There is a *falsidesk* at the airport, consisting of two so-called 'doc-3 specialists' on Sint Maarten. This involves a KMar employee and an IBPS employee. This falsidesk provides support and expertise in the field of falsification and is also mobile and can provide support to, for example, the Civil registry.

The new 'doc-3 specialists' also have the responsibility of working on a database of the most common documents used in falsifications. However, they have just begun this initiative and the results are pending.

Several IBPS interviewees indicate that every member of border control can consult the online system 'Edison TD'. This is an automated system that contains the security features of more than 2500 travel and residence documents from 200 countries. This system has been developed by the National Detective Information Service, in cooperation with the immigration services of the US, Canada and Australia. Furthermore, a limited number of employees with a KMar account can consult the IFADO (Intranet False and Authentic Documents of the European Union) system.

Assessment

The recommendation consists of two parts and has been followed in its entirety. The research shows that in recent years there has been investment in several training courses for IBPS personnel, including document recognition and falsifications.

The Council therefore welcomes the fact that, in addition to the already existing support provided by the KMar, the Minister of Justice has recently concluded an MOU with the Training Institute for Law Enforcement and Security Care in Curaçao. However, the Council considers it important that there is continued attention to investing in the knowledge of the IBPS staff.

The IBPS has specialist support and expertise in the field of falsification through the 'falsidesk'. These specialists are also working on the development of a database of the most common documents used in falsifications.

The Council also notes that border control staff may consult computerised systems to support their work. The Council considers that the recommendation on exploring the possibilities for knowledge databases on documents and falsifications has been followed up.

4.7 (Schematic) Overall Analysis Admission and expulsion

Introduction

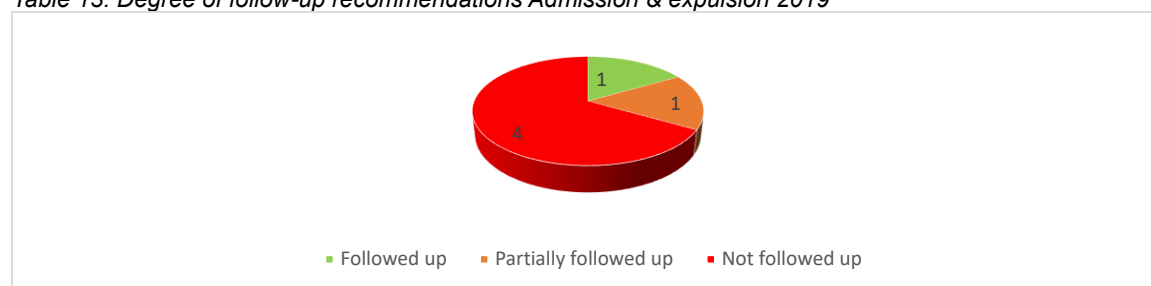
The Council published in 2014 a report on the admission and expulsion of foreigners in Sint Maarten, focused on applications related to the performance of work. Following this inspection, the Council made six recommendations to address the identified bottlenecks related to admission and expulsion practices.

The Council carried out a follow-up inspection in 2019 in which the Council assessed the extent to which the six recommendations made in 2014 had been followed up. This inspection

showed that of the six recommendations made in 2014, only one was followed, one was partially followed and four were not addressed. The overall *compliance* rate was therefore **25%** in 2019.

Following this follow-up inspection, the Council urged the Minister of Justice to give priority to the 2014 recommendations which had not yet been (fully) addressed.

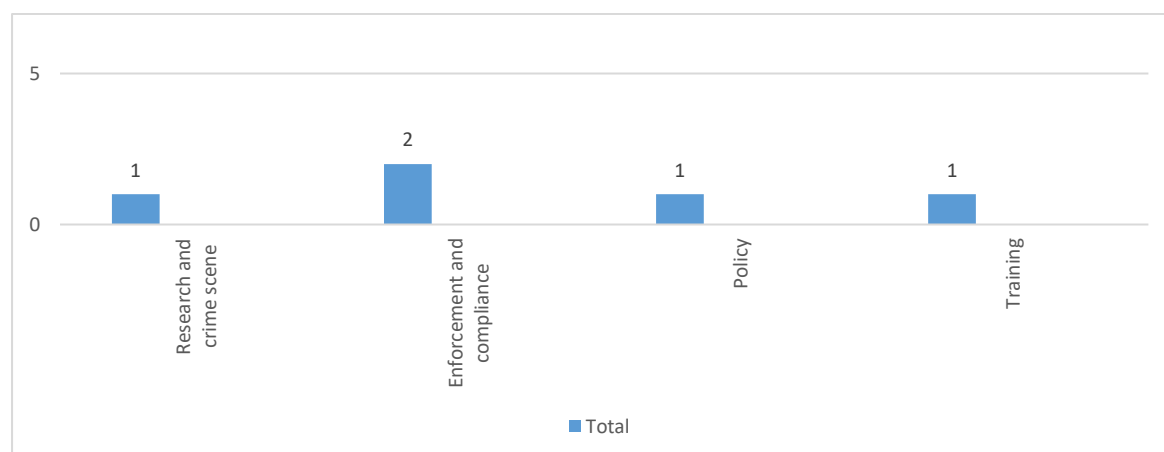
Table 13: Degree of follow-up recommendations Admission & expulsion 2019



In this second follow-up inspection, the Council will assess the state of affairs of the follow-up to the five recommendations in the first follow-up inspection, which have been partially and not yet followed up. The tasks relating to border control of the movement of persons and the control of foreigners in Sint Maarten were laid down by the IBPS in 2010. In 2016 these tasks were transferred to the KPSM, to be transferred back to the IBPS in 2021. The latter change means that the new situation is viewed from the perspective of the IBPS.

The remaining recommendations from 2019 have been broken down into categories by the Council in its database, at its own discretion, in order to give a better understanding of the individual recommendations. The subdivision is intended as an indication and is as follows: research/crime picture (A1A), enforcement/compliance (A1B, A1E), policy (A1d) and training (A1f).

Table 14: Number of recommendations per category



State of affairs Follow-up 2024

The state of affairs in 2024 is that four recommendations have not been followed up and one has been followed up (a recommendation had already been followed in 2019). The *compliance* rate is therefore **33.3%**. The Council will present in three tables the state of affairs as regards the follow-up of the recommendations in 2024, the degree of follow-up by category, and a comparison of the situation in 2019 and 2024.

Table 15: Extent of follow-up Recommendations Admission and expulsion 2024

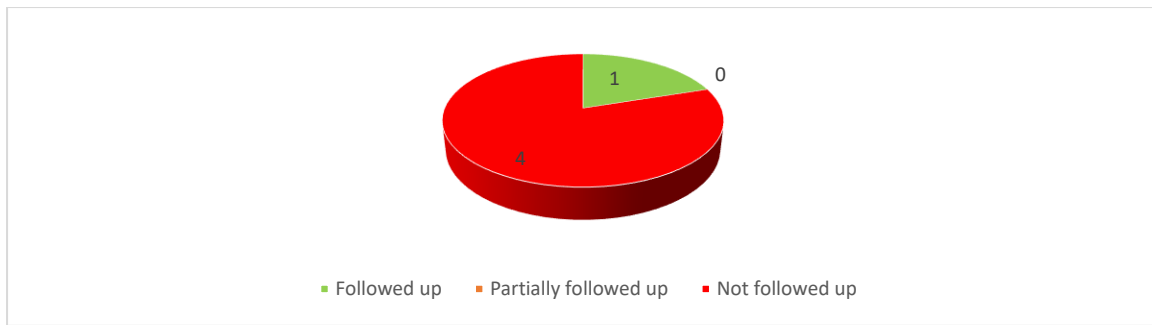


Table 16: Degree of follow-up of recommendations Admission and expulsion by category 2024

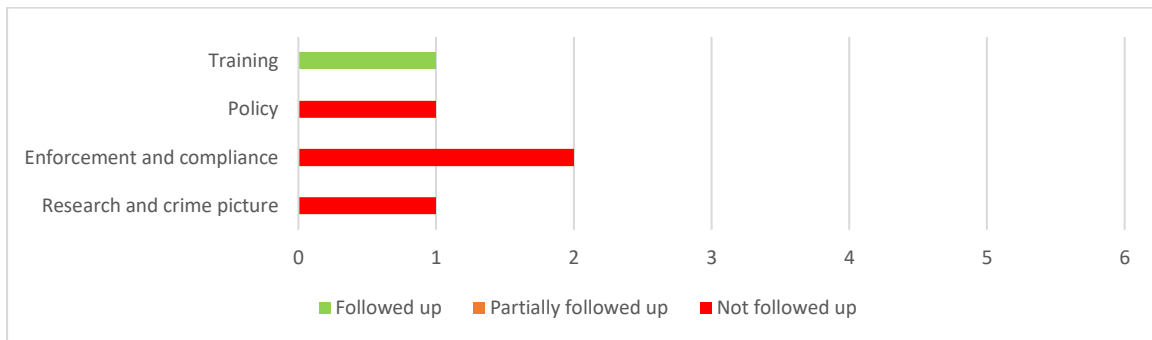
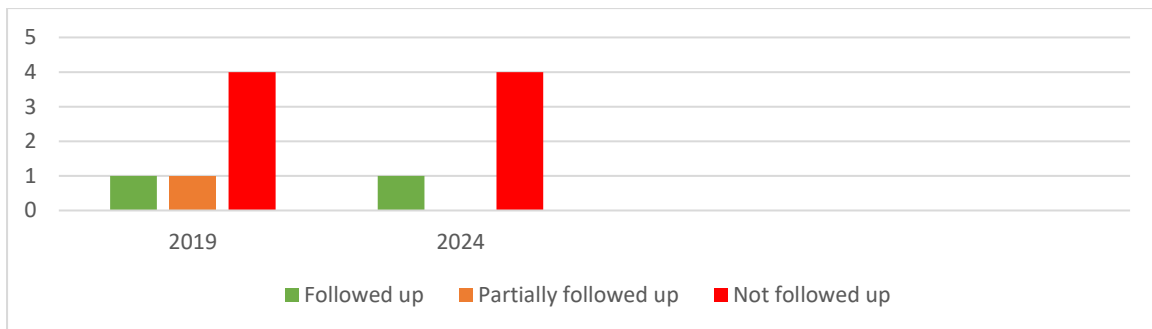


Table 17: Extent of follow-up Recommendations Admission and expulsion 2019-2024



The tables show that there has been some progress in the extent of follow-up to the recommendations given that the compliance rate has increased from **25%** to **33.3%**. Progress has been made in the training category (training in falsifications and document database).

The Council notes that recommendations in the research/crime picture (labour market study/labour market policy), enforcement and compliance (admission policy, synchronisation of decision-making and expulsion practices) and policy (drafting and publication policies) are still stagnated.

The Council considers that the recommendations on enforcement and compliance (synchronisation decision- making and expulsion practice) and policy (drafting and publication policy) are issues without primary financial implications and considers that at least for these a solution should be sought in the shortest possible time.

Recommendation and monitoring

The Council's follow-up inspection provided an overview of the state of affairs regarding the follow-up to the recommendations in the context of admission and expulsion in Sint Maarten.

On the basis of the above, the Council's recommendation to the Minister of Justice is: *Implement the four outstanding Council recommendations and make available the necessary resources as soon as possible.*

The table below shows the state of affairs regarding the follow-up to the recommendations for the Admission and Expulsion Report in Sint Maarten.

Table 18: State of affairs Recommendations 2024

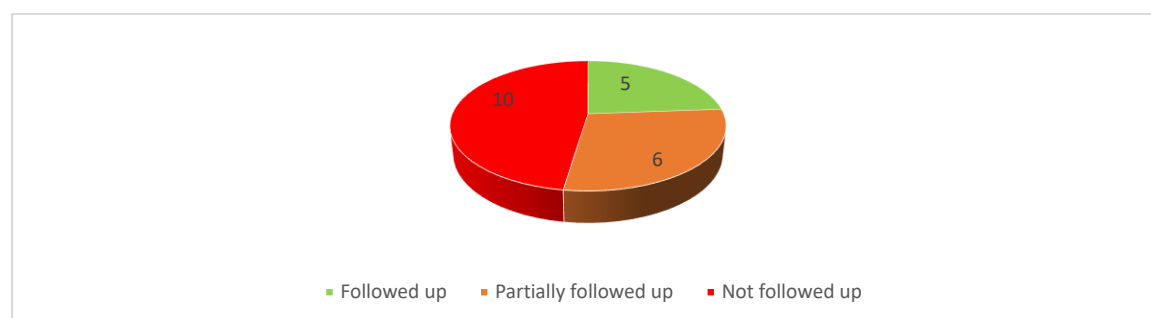
| No. | Recommendation | Review 2019 | Review 2024 |
|---|--|-----------------------|-----------------|
| 1. | <i>Prioritise the recommendations not yet (fully) addressed (see diagram below).</i> | | |
| To the Minister of Justice | | | |
| 1.a | In collaboration with the Ministry of VSA, have a labour market study carried out into the required quality and quantity of employees in Sint Maarten and on the basis of this, in consultation with the Ministry of VSA, draw up a labour market and admission policy for foreigners. | Not followed up | Not followed up |
| 1.b | Ensure that the admission policy is followed and enforced and include the results of the study in cooperation with the Ministry of VSA so that at least the social and economic growth, security and the legal order of Sint Maarten are protected. | Not followed up | Not followed up |
| To the Minister of Justice with regard to the IBPS | | | |
| 1.c | Design a file registration and tracking system that allows all files to be traced smoothly and provides better insight into the nature and quantity of the total influx of foreigners in Sint Maarten and the foreigners residing in Sint Maarten. | Followed | -- |
| 1.d | Put unwritten policies in writing and publish them. | Not followed up | Not followed up |
| 1.e | Reconcile the requirements in the legislation, policy and application form on the one hand and the decision and expulsion practice on the other. | Not followed up | Not followed up |
| 1.f | Invest in the knowledge of the employees on recognising falsified documents and make use of the knowledge available in Sint Maarten (1) and investigate the possibilities for a database containing the most common documents from the most common countries of origin (2). | Partially followed up | Followed |

5. Overarching analysis

Central Question Answer

In this fifth sub-inspection in 2024, the Council assessed the extent to which the recommendations on the two topics mentioned have been followed. These are the reports on border control of the movement of persons (16 recommendations) and the admission and expulsion of foreigners (5 recommendations). This fifth sub-inspection shows that out of a total of 21 recommendations, 5 recommendations have been followed, 6 recommendations have been partially followed and 10 recommendations have not been followed. Table 19 shows the state of affairs in terms of follow-up for all the two topics taken together.

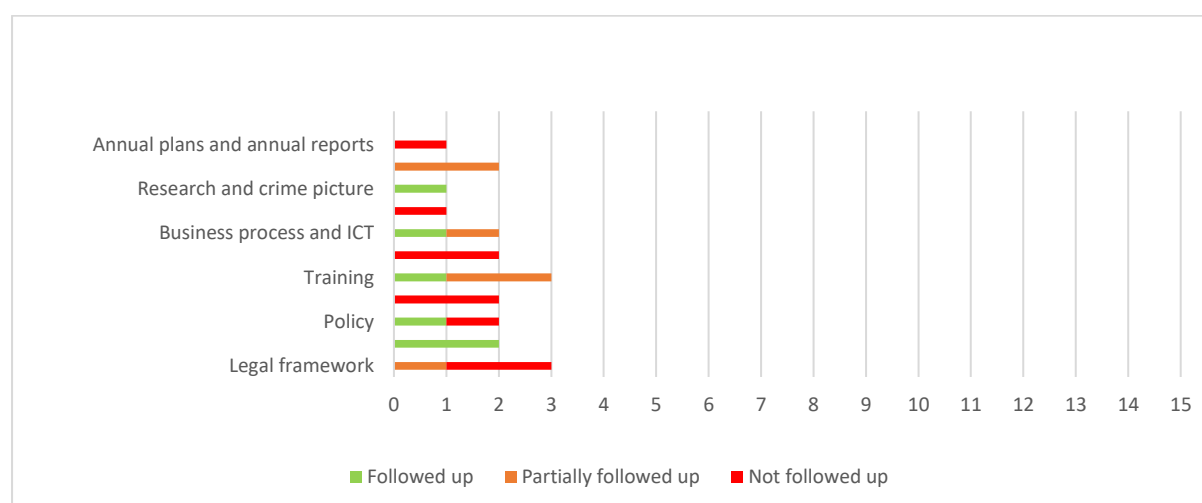
Table 19: Degree of follow-up all recommendations in Sub-inspection 5, 2024



The Council notes a (small) improvement on the topic of border control of the movement of persons. There has been an increase in the recommendations followed and partially followed in the categories of training (2), cooperation countries/regional (2), cooperation chain/countries (2), policy (1) and business processes/ICT (2) and legal framework (1). The recommendations that have not yet been followed are recommendations in the categories: annual plans/annual reports (1), personnel policy (2), establishment plans/office (1) and legal framework (2).

The Council also notes that the issue of admission and expulsion has seen a slight improvement in the degree of follow-up to the recommendations. However, there is still stagnation in the recommendations not yet followed for the categories of policy (1), enforcement and compliance (2) and research/crime picture (1). The only recommendation followed was the training category (1). The table below shows the state of affairs of the Council in terms of follow-up to all the recommendations by category.

Table 20: Degree of follow-up all recommendations Sub-inspection 5, by category, 2024



Overarching picture

Border control in general and border control of the movement of persons in particular is of great importance for law enforcement in Sint Maarten. The island has a relatively large inflow and outflow of people relative to its population. The economy of Sint Maarten is largely dependent on visitors in terms of income and the continuity of the economy is also largely dependent on migrant workers.

The border between Sint Maarten and the French part of the island is an open border and there is free movement between the two parts. Sint Maarten and Saint Martin have their own border controls when someone arrives on the island (external border).

The consequences of poorly functioning border control and immigration control are, in addition to direct risks to security in society, rising costs for public works, health care, social security, security and, last but not least, overcrowding. It is therefore important to ensure that border control is effective, that foreigners are monitored (supervision, admission and expulsion) and that there is good cross-border cooperation with the French authorities.

The Council noted in a previous inspection that, according to several participants in the inspection, there would be no political support in Sint Maarten for the implementation of a strict admission policy and targeted actions to detect illegality.⁶⁰

Illegal residency is widely accepted by society in Sint Maarten: It is seen as a given, on the one hand, because of alleged negative effects on the economy, employment and crime, but on the other hand, there is no hesitation in using *cheap labor* or otherwise taking advantage of the presence of illegal immigrants.⁶¹

The IBPS is responsible for the implementation of the border control and immigration control on Sint Maarten. The Council considers that a major bottleneck at the IBPS in recent years has been the lack of continuity. The many changes in leadership, changes in the management of the organisation and changes in staff meant that the structure and direction was lacking, which meant that the organisation was largely directionless.

Other well-known and recurring issues in this sub-inspection concern the lack of framework conditions of a financial and human nature and policy support to the IBPS. The impression given to the Council is that, due to a lack of structure and continuity, a lot of time and energy has been lost for an extended period in which development and improvement should have taken place.

Generally speaking, many of the recommendations, including some important ones (in the HR policy categories, establishment plan/job classification, policy and legal framework), are still unregulated due to the fact that the recommendations have not been followed or have only been partially followed. The Council notes that too many of the recommendations have not been adopted for almost ten years.

These recommendations concern structural aspects. By this, the Council means, among other things, aspects that form the basis of a well-devised and functioning organisation.

Previous Council reports also mention these aspects as factors which, to a greater or lesser extent, create bottlenecks for further development throughout the chain. In other words, without this change, there is no structural improvement in it.

Steering follow-up recommendations

The Council is aware of the multitude of follow-up recommendations, including those in the area of border control of the movement of persons and immigration control. It is unavoidable

⁶⁰ Law Enforcement Board, report on border control of the movement of persons, 2013

⁶¹ Law Enforcement Board, report on border control of the movement of persons, 2013

that, given the scarce human, financial and material resources of the Ministry, priorities should be set.

However, the Council believes that it is precisely for this reason that a plan of action could be drawn up, for example, to identify priorities, identify the requirements and provide guidance on issues such as a realistic timetable, action holders and funding.

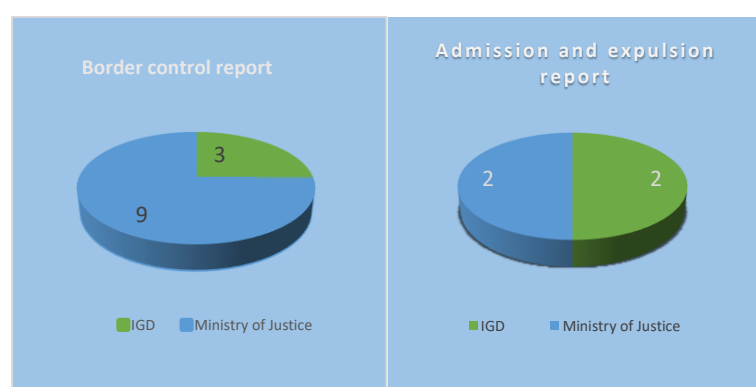
Among other things, formulating a response to the reports offered could help in their implementation, as they can often reflect, among other things, the contours of the intended direction and approach. In addition, the Council considers it appropriate for the Minister of Justice to take the initiative, for example, to draw up a report six months after the publication of an inspection report on the actual state of affairs in the (progress of) follow-up to the recommendations. In the Council's view, the above could also contribute to better steering and monitoring of the follow-up to the recommendations.

Primarily responsible for action on follow-up to the recommendation(s)

In accordance with the Kingdom Act Law Enforcement Council, all recommendations are formally addressed to the Minister of Justice and the Minister must provide the inspection report presented to him, accompanied by his response, to Parliament.

For a number of recommendations, follow up depends primarily on action by the Ministry (the Minister of Justice). For others, follow-up depends mainly on action by the relevant organisation(s) themselves. This is shown below for the 'partly' and 'not followed' recommendations per report.

Table 21: Primarily responsible for action on adherence to recommendations.



Financial consequences follow-up recommendations

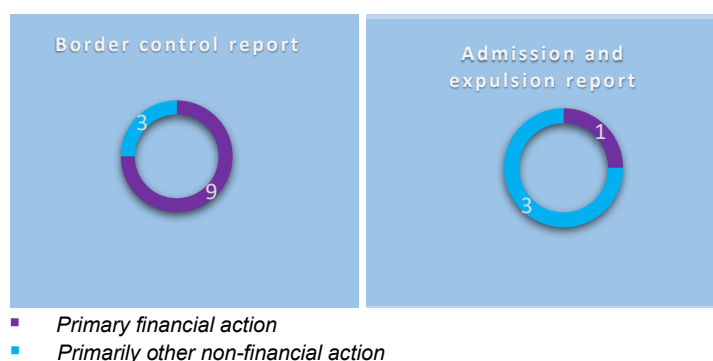
As in previous reports, a lack of finance and capacity is a common reason why the recommendations were not followed. The Council is certainly aware that the country and more specifically the Ministry of Justice are facing financial challenges.

Although all recommendations (almost) always have financial implications, the Council considers that they can be distinguished for follow-up purposes by classifying them into recommendations that actually require primarily financial actions and recommendations that primarily require actions other than financial ones.

On the basis of the above-mentioned database, the Council carried out this exercise in order to give an initial picture. On this basis, it can be concluded for the report on border control that out of a total of 12 partially and recommendations not followed, three recommendations require primarily other, non-financial action and nine recommendations require primarily financial action.

The report on admission and expulsion further concludes that out of a total of 4 partially and not followed recommendations, one recommendation requires primary financial action, and three recommendations primarily require other non-financial actions. The following is a tabular presentation of the above.

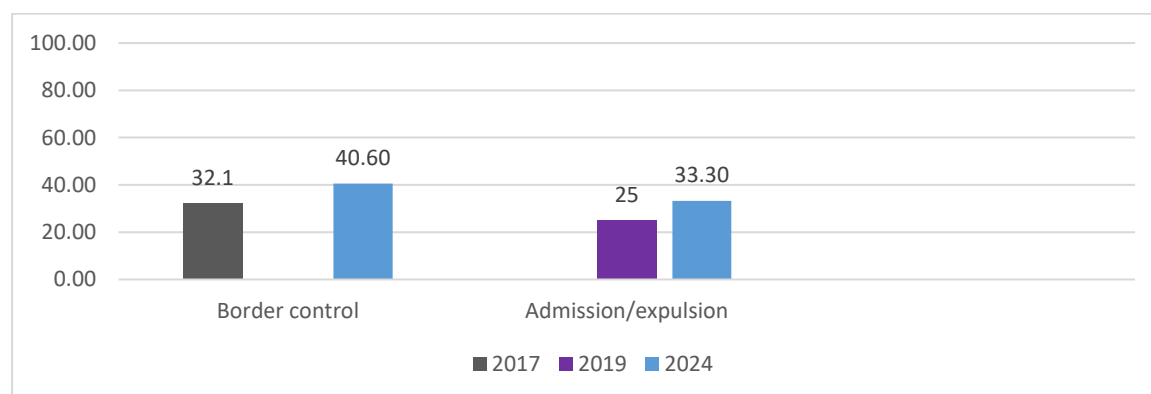
Table 22: Number of recommendations per report classified by recommendations with primary financial action vs. primary other non-financial action.



Finally

Finally, the Council is aware that the recommendations are often dissimilar, and that one recommendation is less complex than the other. However, the Council has expressed the status of each recommendation in a percentage per report.⁶² The percentage listed below is not a hard measure but has only the function of indicator to provide a more visual view of the state of affairs per report.

Table23: Status of compliance rate (%) follow-up recommendations per report



⁶² The compliance rate as an indicator is calculated by assigning a ½ point to each followed recommendation 1 point, each partly followed recommendation and no points to a recommendation not followed. Then the number of points awarded is divided by the total number of recommendations and multiplied by 100 to achieve the compliance rate.

Annex 1: State of affairs recommendations per report

| 2024 State of affairs Recommendations report Border control of the movement of persons | | | | | |
|--|--|---|-----------------------|--|-------------------------|
| Recommendation topic | Category of recommendation ⁶³ | Primary financial action/ Primary other non-financial action ⁶⁴ | Follow-up 2024 | Primarily responsible for action ⁶⁵ | State of affairs > 2024 |
| 1.b Legal status decree IBPS | Legal framework | Primarily not financial | Not followed up | MvJ | |
| 1.c Employee placement | Set-up plans / job house | Primarily not financial | Not followed up | MvJ | |
| 1.d Synchronisation mandating/decision practice | Legal framework | Primarily not financial | Partially followed up | MvJ | |
| 1.th Synchronisation of authorisation decision/practice | Legal framework | Primarily not financial | Not followed up | MvJ | |
| 1.f Structural investments in ICT/operationality ActBMS | Business processes and ICT | | Followed | | |
| 1.g Centering access control of maritime traffic | Policy | | Followed | | |
| 1.h Cooperation and exchange of information | Chain/country cooperation | | Followed | | |
| 1.i Cooperation of the French authorities | Cooperation countries (regional) | Primarily not financial | Partially followed up | MvJ | |
| 1.k Internal organisation IBPS/Communication and transparency | Personnel policy | Primarily not financial | Not followed up | IBPS | |
| 1.l Training/investment | Training | Primarily financial | Partially followed up | MvJ | |
| 1.m Accountability | Annual plans/reports | Primarily not financial | Not followed up | IBPS | |
| 1.n Integrity policy | Personnel policy | Primarily not financial | Not followed up | IBPS | |
| 5. Structural investments in ICT/modern and sustainable border management system | Business processes and ICT | Primarily financial | Partially followed up | MvJ | |
| 6.Cooperation and exchange of information | Chain/country cooperation | | Followed | | |
| 7. Cooperation between the French authorities | Cooperation countries (regional) | Primarily not financial | Partially followed up | MvJ | |
| 8. Training/resources | Training | Primarily financial | Partially followed up | MvJ | |
| Total Compliance %⁶⁶ | | | 40.6 % | | % |

⁶³ As an indication, the recommendations have been broken down into categories by the Council in its database at its own discretion in order to give a little more insight into the individual recommendations.

⁶⁴ Although all recommendations (almost) always have financial implications, the Council considers that they can be distinguished for follow-up purposes by classifying them into recommendations that actually require primarily financial action and recommendations that primarily require actions other than financial action.

⁶⁵ In accordance with the National Law Enforcement Council, all recommendations are formally addressed to the Minister of Justice. For a number of recommendations, succession depends primarily on action by the Ministry (the Minister of Justice). For others, follow-up depends mainly on action by the relevant organisation(s) themselves.

⁶⁶ The compliance rate as an indicator is calculated by assigning a ½ point to each followed recommendation 1 point, each partly followed recommendation and no points to recommendations not followed. Then the number of points awarded is divided by the total number of recommendations and multiplied by 100 to achieve the compliance rate.

| 2024 State of affairs Recommendations report Admission and expulsion of foreigners | | | | | |
|--|--|--|-----------------|--|-------------------------|
| Recommendation topic | Category of recommendation ⁶⁷ | Primary financial action/ Primary other non-financial action ⁶⁸ | Follow-up 2024 | Primarily responsible for action ⁶⁹ | State of affairs > 2024 |
| Labour market study/Labour market-admission policy and implementation | Research and crime picture | Primarily financial | Not followed up | MvJ | |
| Admission policy | Enforcement and compliance | Primarily not financial | Not followed up | MvJ | |
| Writing and publishing policies | Policy | Primarily not financial | Not followed up | IBPS | |
| Synchronisation decision and expulsion policy | Enforcement and compliance | Primarily not financial | Not followed up | IBPS | |
| Training falsifications and building documents file | Training | | Succeeded | | - |
| | | | | | |
| Total Compliance %⁷⁰ | | | 33.3 % | | % |

⁶⁷ As an indication, the recommendations have been broken down into categories by the Council in its database at its own discretion in order to give a little more insight into the individual recommendations.

⁶⁸ Although all recommendations (almost) always have financial implications, the Council considers that they can be distinguished for follow-up purposes by classifying them into recommendations that actually require primarily financial action and recommendations that primarily require actions other than financial action.

⁶⁹ In accordance with the National Law Enforcement Council, all recommendations are formally addressed to the Minister of Justice. For a number of recommendations, succession depends primarily on action by the Ministry (the Minister of Justice). For others, follow-up depends mainly on action by the relevant ORGAnisAtiOn(s) themselves.

⁷⁰ The compliance rate as an indicator is calculated by assigning a ½ point to each followed recommendation 1 point, each partly followed recommendation and no points to an unfollowed recommendation. Then the number of points awarded is divided by the total number of recommendations and multiplied by 100 to achieve the compliance rate.

Colophon

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