



INSPECTION INTO THE APPROACH TO DRUG CRIME AND DRUG-RELATED PROBLEMS IN SINT MAARTEN

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Law Enforcement Council

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Abbreviations

CBA	Crime Pattern Analysis (<i>Criminaliteitsbeeldanalyse</i>)
CCLEC	Caribbean Customs Law Enforcement Council
DEA	Drug Enforcement Administration
CID	Criminal Intelligence Agencies (<i>Criminele Inlichtingen Diensten</i>)
TCI	Criminal Intelligence Unit (<i>Team Criminele Inlichtingen</i>)
ICSM	Intelligence Center Sint Maarten
IGD	Immigration and Border Protection Service (<i>Immigratie en Grensbewakingsdienst</i>)
JVO	Four Party Judicial Consultation (<i>Justitieel Vierpartijen Overleg</i>)
KMar	Royal Marechaussee (<i>Koninklijke Marechaussee</i>)
KPSM	Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>)
LR	National Detectives Agency Sint Maarten (<i>Landsrecherche Sint Maarten</i>)
MHF	Mental Health Foundation
FIU	Financial Intelligence Unit (<i>also MOT: Meldpunt Ongebruikelijke Transacties</i>)
MLC	Miss Lalie Center (juvenile detention facility)
ECYS	Education, Culture, Youth and Sport
OM	Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
PAF	Police Aux Frontières (FR)
AG	Attorney General (<i>Procureur-Generaal PG</i>) Curaçao, Sint Maarten, Bonaire, Sint Eustatius, Saba
PJIA	Princess Juliana International Airport
Council	Law Enforcement Council
RST	Detective Cooperation Team (<i>Recherche samenwerkingsteam</i>)
SG	Secretary-General
SJIS	Foundation for Judicial Institutes of Sint Maarten (<i>Stichting Justitiële Instellingen St. Maarten (former SJIB)</i>)
TPF	Turning Point Foundation
VSA	Public Health, Social Development and Labor (<i>Volksgezondheid, Sociale Ontwikkeling en Arbeid</i>)

Prologue

This report contains the Law Enforcement Council's assessment of Sint Maarten's approach to drug crime and drug-related problems. The Council has investigated the local approach as well as the interregional and international cooperation in the fight against drugs.

It is the Council's opinion that international and interregional laws and regulations are not inadequate. However, the national opiate legislation needs updating and there is no integrated policy in Sint Maarten. Despite this, many employees within various justice and social service agencies are, each based on their respective roles, enthusiastically working on preventing and combating drug crime and drug-related problems.

The Council recognizes that the precise nature and scope of drug-related crime and associated problems remain unclear. However, the image that emerges from this investigation is certainly not rosy. Sint Maarten is a major transit country for international drug trafficking through the Caribbean region and the local traffic and use of drugs also create serious problems. In this inspection, the Council found cases of liquidations, violence, corruption and money laundering, addiction and psychosocial problems, school dropouts, and unemployment caused by the trafficking and use of drugs. A coordinated approach to address these problems, however, is absent.

While the Council welcomes developments to strengthen border control and judicial cooperation to combat international drug trafficking, it also recognizes the potential for further improvement in these areas. The approach to local drug crime warrants a fresh new boost. It requires urgent investment in preventive measures as well as improvements in the quality and accessibility of addiction treatment. Given the seriousness and impact of drug-related crime and problems on an individual and societal level, the Council believes these issues deserve high priority.

The Council expresses its gratitude to the respondents from the various organizations for engaging in pleasant and open discussions as well as for their contributions to this inspection.

THE LAW ENFORCEMENT COUNCIL

Mr. Th.P.L. Bot, chairman,

Mr. M.R. Clarinda,

Mr. L.M. Virginia.

Summary and recommendations

In its annual plan for 2019, the Law Enforcement Council (hereafter: the Council) announced that it would research the approach to drug crime (drug law offenses) and drug-related problems (crime, nuisance and/or problems caused by or related to drug crime). The central question in this inspection is: To what extent is the approach to drug crime and drug-related problems in and between the countries within the Kingdom formulated and does the approach contribute to combating and preventing drug crime and drug-related issues?

International legislation and regulations, and insights from (scientific) literature, reveal that prevention and combating of drug-related crime and associated problems requires an integrated approach, with attention for the related security, health, and socio-economic dimensions. Repression and prevention should go hand in hand to diminish the supply of and demand for drugs, as well as to combat drug-related problems. It requires cooperation and coordination at national, interregional, and international levels.

Sint Maarten is a transit country for international drug trafficking between primarily South America (supply/production side) and North America and Europe (demand side) via the 'Caribbean Route'. Primarily cocaine and marijuana are trafficked. Based on the findings of this inspection, the Council concludes that the focus of the approach is on the prevention of international drug trafficking at the border. The Council recognizes the positive development in the reinforcement of border control in Sint Maarten, where organizations tasked with border control are becoming increasingly professional and seeking cooperation. While there is certainly room for improvement and the results remain to be seen in the long term, the Council commends this development.

In the Council's opinion, Sint Maarten's approach can be strengthened if investments are made to define and synchronize priorities, policies, and operational practices of the organizations involved. Currently, the approach depends on individual judgment and is therefore vulnerable. It is essential that investigations are carried out efficiently and that the appropriate escalation takes place to ensure prompt action where necessary. In this review, the Council also observed several vulnerabilities within the logistical infrastructure (including the security of airports and seaports).¹ An effective fight against drugs calls for intelligent investments (for example, in additional camera surveillance), inter-ministerial and public-private cooperation, and decisive action by the government. The aspect of security must be prioritized within the various fora and must not be regarded as an "impediment" to commercial or economic interests. The Council recognizes that the Minister of Justice has a key role to play in this regard since political and governmental decision-making can improve the ability of law enforcement agencies to combat drug-related crime and (thus) guarantee that the security dimension is accorded the requisite priority.

By focusing on the fight against international drug trafficking at the border, the Council believes insufficient attention is given to the fight against local drug crime and drug-related problems. The problems associated with the local trafficking and use of drugs affect various layers of society and cannot be ignored. Consequently, the local drug response in Sint Maarten must receive a boost.

Based on the results of the inspection, the Council notes a downward spiral in which drug abuse, socio-economic- and psychosocial issues are mutually sustained. The Council finds it unacceptable that Sint Maarten's government currently has no prevention policy. Knowledge and awareness are essential for reducing the drug demand. In addition, addiction treatment must be of high quality and accessible to everyone. The Council notes that this is currently not the case. The healthcare- and justice sectors need

¹ Pursuant to section 31 sub 2 and 3 Kingdom Act Law Enforcement Council [Rijkswet Raad voor de rechtshandhaving], for security considerations sections of this report are not publicly disclosed.

to be more closely aligned via inter-ministerial policy. However, none of the ministries involved (Justice, VSA, ECYS) are taking the lead in this matter.

It is the Council's opinion that a comprehensive, multidisciplinary approach is the only way to achieve tangible results. Merely relying on repressive action by the justice system will not solve the overall drug problem; a successful approach involves more than just dealing with the symptoms. Ministries, agencies, and the community must structurally collaborate to tackle the causes and effects of drug-related crime and -problems.

Finally, the Council identifies opportunities for improvement through broader interregional and international cooperation. The inspection shows that information is primarily shared on an 'ad hoc' basis between the countries within the Kingdom and internationally. In this inspection, the Council saw examples of successful cooperation in specific investigations but believes there are lost opportunities because the information is not systematically exchanged or shared between the countries. Drug crime is acknowledged as being a cross-border problem, the Council, therefore, recommends that the countries improve their interregional and international information (intelligence) position and strengthen cooperation to that end. In addition, the Council notes that interregional and international cooperation is currently mostly repressive (judicial). The Council believes that the systematic sharing of professional knowledge, best practices, and investigative findings and research in the field of drug crime and related problems requires improvement.

Accordingly, the Council issues the following recommendations to the Minister of Justice of Sint Maarten to improve the approach to drug crime and drug-related issues:

1. Update the National Opium Ordinance.
2. a) Encourage the Intelligence Center Sint Maarten to develop a solid intelligence position with regards to drug crime.
b) Promote - in connection with the above - joint efforts by the countries to build an interregional and international intelligence position with regards to drug crime.²
3. Promote uniformity and continuity in the operational cooperation by ensuring that priorities, policies, and operational agreements are established, adopted, and known in the field (e.g., on the timing of escalation and transfer or feedback between organizations).
4. Ensure that vulnerabilities in the logistics infrastructure (including security at the air- and seaport) are resolved expeditiously.
5. Encourage and implement the necessary political-governmental decision-making that will enable law enforcement authorities to improve the fight against drug crime and related problems and invest in public-private partnerships, affording the security perspective the requisite priority.
6. In collaboration with relevant ministries and authorities, establish a task force and regular consultative meetings to boost the fight against and prevention of drug crime and drug-related problems in Sint Maarten.
7. Develop and formalize a strategic vision and take the initiative to establish inter-ministerial policies where security, healthcare- and socio-economic aspects are coordinated.
8. In the short term, organize a prevention and awareness campaign together with colleagues from other ministries.
9. In collaboration with colleagues from other ministries, identify opportunities for improving the quality and accessibility of high-quality (drug) addiction treatment.

² In the report on the approach to human trafficking and human smuggling the Council issued a similar recommendation.

1. Introduction

1.1. Background

The Council is charged with the general inspection of the justice chain organizations in Curaçao, Sint Maarten, and the Netherlands for the public entities of Bonaire, Sint Eustatius, and Saba. Moreover, the Council is responsible for the general inspection of the quality and effectiveness of judicial cooperation between the countries. The choice of inspection is based on societal interests as well as the importance of properly functioning law enforcement in the countries. Among the topics the Council investigated in 2019, was the approach to combating drug crime.

Drug crime and the associated problems are global in scope. The member countries of the United Nations agreed in 1988 on a treaty to address and combat the problem:

'The demand for, and trade in, narcotics constitutes a serious threat to the health and well-being of people and affects the economic, cultural, and political underpinnings of society. The illegal trade in narcotics is increasingly capable of penetrating various social groups. The links between illicit trade and other, related, criminal practices undermine the legitimate economy and threaten the stability and security of nations. Illegal trafficking is a form of international criminal activity and combating it requires urgent attention and the highest priority'.³

Despite years of (international) efforts in the fight against drugs, drug crime keeps changing. Within the drug trade, not only do changes appear in, for example, smuggling routes, but the types of drugs (and thus their 'origin') change over time. The demand for, and trade in, narcotics also causes addiction problems, which can have a major impact both at the individual and neighborhood/community level.

The Caribbean region is appealing for the trade and transit of narcotics partly because of its geographic location. Given the complex nature of this problem, cooperation is essential.⁴ Countering and preventing drug crime requires an approach at both local, interregional⁵ as well as international levels. This requires attention for drug-related problems, such as addiction and social nuisance. Considering the considerable social impact caused by the demand for and trade in drugs, the Council investigated the approach to drug-related crime and the associated problems.

1.2. Objective

With this inspection, the Council seeks to contribute to the understanding of the approach to drug-related crime and associated problems in and between the countries within the Kingdom (interregional approach). The Council thereby strives to acquire insight into whether, and to which extent, the approach contributes to combating and preventing drug-related crime and problems.

1.3. Central Question

The central research question is as follows:

³ Preamble to the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Vienna, 20-12-1988.

⁴ Also refer to: Convention on Cooperation in Combating Illicit Traffic in Narcotic Drugs [...] substances by sea and air in the Caribbean, San Jose, 10-04-2003.

⁵ In this report, 'interregional' refers to the countries within the Kingdom within the Caribbean region (in which the Council is authorized to carry out inspections): Curaçao, Sint Maarten and the Caribbean Netherlands.

To what extent is the approach to drug crime and drug-related problems in and between the countries within the Kingdom formulated and does it contribute to combating and preventing these problems?

To answer this line of inquiry, the following sub-questions were developed:

1. What is the nature and scope of drug crime and drug-related problems in the countries within the Kingdom?
2. What should the approach to drug-related crime in and between the countries within the Kingdom minimally conform to, based on (inter)national laws and regulations?
3. How is the local, interregional, and international approach to drug crime and drug-related problems structured in practice?
4. To what extent does the approach contribute to combating and preventing drug crime and drug-related problems?

1.4. Scope and limits of the inspection

This inspection examines the approach to drug-related crime. It defines drug-related crime as all offenses listed in among others the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁶, as also translated into the countries' opium laws, in short: the illegal preparation/manufacturing/possession of and/or (facilitation of) the trafficking in narcotics. Drug-related problems are defined as a crime, nuisance, and/or problems arising from or related to drug-related offenses. These include other criminal activities (not including opium crimes) such as violence or murder in the drug trade, the nuisance or disruption of public order caused by the drug trade, and/or health problems due to drug use and drug addiction, or other adverse social consequences.

Not only does the Council examine the approach to combating drug crime in the individual countries, but -in accordance with its authority as stipulated in Article 3, paragraph 3, of the Kingdom Act on the Law Enforcement Council- it also investigates the cooperation between the countries.

The scope of this inspection may differ from country to country depending on the nature and scale of drug crime and drug-related problems identified in each country, the focus of the (local) approach, and the Council's previous investigations.

The inspection covers the period from 2010 through the first half of 2019.

1.5. Assessment framework

The assessment framework consists of the following components:

- Treaties and legislation
- Standards and insights from (scientific) research
- Jurisprudence, policy, and other relevant information

1.6. Research methodology

This inspection was conducted using literature searches and interviews with government officials, portfolio holders, (policy) advisors, and staff of organizations/agencies with a (legal) role in combating drug crime and related issues (see Appendix 1).

The inspection was performed according to the following phases:

⁶ Refer to Article 3: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20-12-1988

1. orientation phase: preliminary discussions and general in-depth analysis of the topics to determine the appropriate direction for the research.
2. desk research: literature review, drafting of the theoretical/legal framework, and interview preparation.
3. data collection: conducting the interviews.
4. analysis and reporting: using the main and sub-questions as a basis for analyzing the collected information and drafting the inspection report.
5. feedback and finalization: respondents were allowed to provide feedback on the draft report, after which their comments were processed, and the report was presented to the Council members for final approval.

1.7. Reading guide

To answer the sub-questions of this report, the next chapter presents the legal framework and policies. Chapter 3 presents the research findings for the country of Sint Maarten.⁷ In chapter 4 findings are discussed regarding interregional and international cooperation. At the end of each chapter, the Council's analysis is presented. Finally, in answer to the central question of this inspection, Chapter 5 offers the Council's conclusions and recommendations.

⁷ The Council will prepare separate inspection reports for Curaçao and the Dutch Caribbean, based on the findings for those countries and present these reports to the relevant Ministers of Justice (and Public Safety).

2. Legal framework and policy

2.1. Introduction

To respond to the first two sub-questions, this Chapter will first broadly describe the nature and scope of drug crime in the Caribbean (Section 2.2). In addition, some general insights regarding the approach to drug-related crime will be briefly discussed (section 2.3). Section 2.4 provides an overview of the relevant international regulations. Section 2.5 contains a description of the constitutional guarantees and laws and agreements within the Kingdom about combating drug crime. Next, section 2.6 discusses national laws, regulations, and policies. In the last section of this chapter (section 2.7), the Council's analysis and conclusion regarding the requirements for the approach to drug crime are presented.

2.2. The nature and scope of drug crime in the Caribbean

The exact nature and scope of drug crime and drug-related problems in the countries is difficult to define. Various (international) studies have, nevertheless, produced meaningful findings regarding drug trafficking and drug use in the Caribbean.

Curaçao, Sint Maarten, and the Caribbean Netherlands are part of a group of 32 islands in the Caribbean Sea. These islands are characterized by long coastlines that are difficult to monitor and, as a result, offer opportunities for international drug trafficking. The trafficking is primarily in cocaine, closely followed by cannabis. Especially the Eastern Caribbean islands are located relatively close to each other and form a logistical conduit for transit-islands between the two largest cocaine-producing countries, Peru and Colombia, and the world's largest consumer of cocaine, the United States.⁸ This route is often used by criminal drug organizations from Colombia and Venezuela, as well as Jamaican and Dominican gangs with strong ties to both mainland Spain and the Canary Islands. Cocaine trafficking along this route is facilitated by the historical (colonial) relationship between several Caribbean and European countries, a fact that also applies to the Netherlands and the Caribbean part of the Kingdom.⁹ In this context, the Netherlands (alongside Belgium and Spain) is one of three main gateways and distribution hubs for cocaine trafficking in Europe.¹⁰

⁸ Crime Pattern Analysis Sint Maarten 2011; UNODC World Drug Reports; INCB Annual reports; INCSR report 2019; DEA National Drug Threat Assessments

⁹ Clarke, C.P. (2015)

¹⁰ EU Drug Markets Report 2019

Using the Caribbean route, drugs are smuggled in various ways; each modus operandi is depicted below using different colors:



Source: IDPC (2014)

Estimated volumes of international drug trafficking via the Caribbean route vary by source and measurement time/method. The Drug Enforcement Administration's latest National Drug Threat Assessment describes an increase in cocaine trafficking in the Caribbean in both 2016 and 2017. In 2017, an estimated 7% of total cocaine trafficking from South to North America was through the Eastern Caribbean.¹¹

Up-to-date data on the prevalence of cocaine use among the population is not available for any of the Caribbean countries.¹² According to the 2017 World Drug Report, the annual prevalence of cannabis use among persons aged 15 to 64 years in the Caribbean is estimated at 2.1 percent. The use of opioids is estimated at 0.24 percent and the use of opiates at 0.15 percent. Cocaine use is estimated to be 0.61 percent in Central America and 0.62 percent in the Caribbean. For amphetamine and prescription stimulants, the prevalence is estimated at 0.71 percent in Central America and 0.86 percent in the Caribbean. The annual prevalence of XTC use is the lowest of all the banned substances and is estimated at 0.06 percent in Central America and 0.16 percent in the Caribbean.¹³

¹¹ DEA National Drug Threat Assessment 2018

¹² UNODC World Drug Report 2019

¹³ UNODC World Drug Report 2017

2.3. General insights on tackling drug crime and drug-related issues

The approach to drug crime and related issues is codified in several international conventions (which are outlined in the next section). The 'United Nations Office on Drugs and Crime' and the 'United Nations Commission on Narcotic Drugs' support the member states¹⁴ in the national, regional, and international approaches to the drug problem. Drug crime and drug-related problems require a multi-faceted, multi-disciplinary approach that incorporates the various aspects of both the demand and supply sides of the market. Coordinated policies must be implemented from among others, a public safety perspective, as well as from a health and socio-economic standpoint. The reduction of the demand for drugs requires a focus on prevention (increasing knowledge and awareness), treatment, and rehabilitation of addicts (high-quality addiction treatment). Reducing the supply of drugs requires strong government institutions with the capacity to intercept and control the international drug trade. Moreover, related crimes that provide supply-side opportunities in the drug market should be targeted, such as the fight against money laundering.¹⁵ Parties to the treaties, including the Kingdom of the Netherlands (the BES Islands, Sint Maarten, and Curaçao) recognize that the eradication of illegal trade is a shared responsibility of all nations and that coordinated actions in the context of international cooperation are necessary to achieve this goal.

As mentioned, the United States and Europe are the main markets (the demand side) of the international drug trade through the Caribbean. For this inspection, it is relevant to examine the policies that have been implemented to address drug crime and drug-related problems in the region. The Drug Enforcement Administration (DEA) is responsible for drug policy in the US. The European Union and its member states have embedded European drug policy in the EU Drug Strategy 2013-2020. Both EU and US policy strategies are designed around reducing supply and demand using law enforcement, prevention and treatment, information, and knowledge enhancement, monitoring, and evaluation. In the process, cooperation, and coordination between and within law enforcement agencies at both a national and international level is a common thread across both strategies, with consideration for organized criminality associated with drug crime.¹⁶

A barrier model is often used to provide an effective, integrated approach against organized crime, for example, drug-related criminality. The barrier model provides an understanding of the steps criminals must complete to commit a crime. The model also highlights which parties and opportunities facilitate the crime, and which of them are likely to play a role in complicating or penalizing it, in other words, what barriers could be introduced. Combined measures of a governmental, criminal, fiscal, or civil character can be applied in response. Barrier models can differ per type of phenomenon. In terms of tackling drug crime, it is possible to examine the entire logistics process of substances, production sites, production know-how, (international) transportation channels, paying customers, and the way these are linked.¹⁷

¹⁴ The entire Kingdom is a member state and has ratified drug control treaties (see section 2.4)

¹⁵ www.unodc.org

¹⁶ www.dea.gov; EU Drugs Strategy (2013-2020) Official Journal of the European Union (2012/C 402/01), eur-lex.europa.eu;

¹⁷ Center for Crime Prevention and Safety (*Centrum voor criminaliteitspreventie en veiligheid* CCV); Tops, P., Valkenhoef, J. van e.a. (2018)

2.4. International regulation

International treaties have been established between many countries to prevent and combat drug-related crime. Conventions to which the Kingdom of the Netherlands is a party include:

Treaty	Objective/content	Party
Convention on the manufacture and preparation of, and traffic in, narcotic drugs, Geneva, 19-02-1925	Under this Convention, the signatories undertake to adopt laws and regulations to ensure effective control over the production, distribution, and export of raw opium. The signatories also undertake to periodically review and strengthen the laws and regulations.	Entire Kingdom
Convention for the Restriction of the Manufacture and Regulation of the Distribution of Narcotic Drugs, Geneva, 13-07-1931	Under this Convention, the signatories are required to take measures to restrict the manufacture and trafficking of narcotic drugs.	Entire Kingdom
Protocol to amend the Conventions, Treaties and Protocols relating to Narcotic Drugs, New York, 11-12-1946	The Countries party to this Protocol undertake mutually, in respect of the documents to which they are a party, and under the provisions of this Protocol, to accord full legal force and effect to, and to give due effect to, the amendments to those documents set out in the annex to this Protocol.	Entire Kingdom
Protocol to place narcotic drugs under international supervision, which are outside the scope of the Convention of July 13, 1931, restricting the manufacture and regulating the distribution of narcotic drugs, as amended by the Protocol of December 11, 1946, Paris, 19-11-1948	The Countries party to this Protocol mutually undertake, in respect of the documents to which they are a party, and under the provisions of this Protocol, to accord full legal force and effect to, and to give due effect to, the amendments to those documents set out in the annex to this Protocol.	Entire Kingdom
Single Convention on Narcotic Drugs, 1961, New York, 30-03-1961	On one hand, this convention emphasizes that addiction to narcotic drugs is a danger to human health and well-being, on the other hand, the convention states that sufficient measures should be taken to ensure that narcotic drugs are available only for medical use.	Entire Kingdom
Convention on Psychotropic Substances, Vienna, 21-02-1971	This treaty was concluded, among other things, to prevent and combat the misuse of psychotropic substances and resulting illegal trafficking.	Entire Kingdom
Protocol to amend the Single Convention on Narcotic Drugs, 1961, Geneva, 25-03-1972	This Protocol comprises the amendments that the Signatory Countries wish to introduce because of the Single Convention on Narcotic Drugs.	Entire Kingdom
Agreement between the Kingdom of the Netherlands and the Republic of Venezuela concerning the prevention, monitoring, and suppression of the abuse of illicit trafficking in, and the illicit production of, narcotic drugs, psychotropic substances, and chemical substances related thereto, Oranjestad, 29-08-1988	The Kingdom of the Netherlands and Venezuela have agreed to cooperate in the realization of specific programs against the abuse and for the prevention and suppression of the illicit trade in and production of narcotics, psychotropic substances, and chemical agents.	Entire Kingdom

Treaty	Objective/content	Party
United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20-12-1988	The purpose of this Convention, under Article 2, is to promote cooperation between the Parties to enable them to effectively combat the various aspects of illicit traffic in narcotic drugs and psychotropic substances, particularly the international aspects.	Entire Kingdom
Convention on Illicit Maritime Trafficking, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Strasbourg, 31-01-1995	This treaty was concluded because of the desire of the Parties to extend their cooperation to the greatest extent possible to combat the illicit maritime traffic in narcotic drugs and psychotropic substances, under international maritime law and in full respect of the principle of freedom of navigation.	European Netherlands Caribbean Netherlands and Curacao
Treaty on cooperation between the Kingdom of the Netherlands and the Government of the United States of America regarding access to and use of facilities in the Netherlands Antilles and Aruba for aerial drug enforcement, Oranjestad, 02-03-2000	Under this treaty, the Netherlands Antilles and Aruba, authorize the U.S. Government to enter and use Hato International Airport in the Netherlands Antilles and Reina Beatrix International Airport in Aruba, as well as designated ports and related facilities, solely in connection with aerial drug interdiction tasks consisting of surveillance, tracking, and, as appropriate, interception in the contiguous region. Access and use authorized under this Treaty is limited to U.S. personnel, air observers, contractors, and employees of contractors, as well as vessels and vehicles used for direct operational and logistical support, and unarmed aircraft operated by or solely for the benefit of the U.S. Government.	Caribbean Netherlands Sint Maarten, Curaçao, and Aruba
UN Convention against Transnational Organized Crime, New York, 15-11-2000	The purpose of this treaty, considering article 1, is to promote cooperation to prevent and more effectively combat transnational organized crime.	Entire Kingdom
Treaty on Cooperation in Combating Illicit Traffic in Narcotic Drugs Psychotropic Substances by Sea and Air in the Caribbean, San Jose, 10-04-2003	This treaty was concluded in recognition of the complex nature of the problem of narcotics trafficking in the Caribbean. The purpose of the treaty is contained in Article 2 and reads: "The Parties shall cooperate to the maximum extent possible in combating illicit trafficking by sea and air in the waters of the Caribbean and the airspace above, consistent with the Parties' available law enforcement resources and related priorities, under international maritime law and applicable conventions, to ensure that suspected vessels and suspected aircraft are detected, identified and continuously monitored and that, where evidence of involvement in illicit trafficking is found, suspected vessels are detained so that appropriate law enforcement action can be taken by the responsible law enforcement authorities. " This treaty provides the basis for patrolling outside of one's territorial waters in the Caribbean.	Entire Kingdom

2.5. Regulations of the Kingdom of the Netherlands and interregional agreements

2.5.1 The Charter of the Kingdom of the Netherlands

Under article 38, the Netherlands, Aruba, Curaçao, and Sint Maarten may enter into mutual agreements. When it comes to criminal matters of an interregional or international character, regulations may be made by Kingdom Law, if there is agreement on these regulations between the Governments of the countries concerned.

Article 39 of the Charter regulates the so-called concordance principle. According to this principle, several national issues, including criminal law and criminal procedure, should be regulated in the Netherlands, Aruba, Curaçao, and Sint Maarten as similarly as possible.

2.5.2 Kingdom Laws

Several Kingdom laws govern cooperation between the countries:

- ❑ The Kingdom Act on Public Prosecutors and the Kingdom Act on Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba explicitly refer to cooperation to combat 'international drug trafficking'.¹⁸

Similarly, the 'Policy program on cross-border crime 2016-2020' of the Public Prosecutor's Office (OM) emphasizes this. In addition to improving the intelligence function and conducting criminal investigations, this policy program highlights the importance of a multidisciplinary approach and barrier model. Based on Article 57a of the Kingdom Police Act, the 'Amendment of the Protocol on Specialized Criminal Investigation Cooperation between the Countries of the Kingdom' was signed on January 23, 2019, by the Minister of Justice of Aruba, Curaçao, Sint Maarten, and the Netherlands, as well as the State Secretary for Interior and Kingdom Relations of the Netherlands. By way of this protocol (originally dating back to 2001), the investigative cooperation in the Caribbean part of the Kingdom was renewed. The protocol describes among others the organization and tasks of a Detective Cooperation Team (RST). The RST consists of one (or more) core team(s) and a decentralized team in each country. The core teams investigate cross-border crime (including international human trafficking) and crimes that, given their severity or frequency, or the way they are organized, constitute a serious breach of the rule of law. The protocol states that a biannual crime overview will be drafted, which will form the basis for a multi-year policy plan that will determine the joint priorities of the local police forces and the RST.¹⁹

- ❑ The Kingdom Act Coast Guard for Aruba, Curaçao, and Sint Maarten and the public entities Bonaire, Sint Eustatius, and Saba describes (among others) the *general police tasks and border control* as supervisory and investigative tasks of the Coast Guard.²⁰

In the 'Judicial Policy Plan 2018-2021' and the 'Annual Plan 2019' and 'Outlook 2020-2024' of the Caribbean Coast Guard, transportation of narcotics is explicitly included as one of the four policy priorities.

- ❑ Kingdom Act approving and implementing the Agreement with the USA on cooperation in the detection, seizure, and confiscation of the proceeds and aids to the commission of a crime and the distribution of confiscated property.

An agreement was concluded between the Kingdom of the Netherlands and the United States of

¹⁸ Article 8 of the Kingdom Act Police Curaçao, Sint Maarten and Bonaire, Sint Eustatius, and Saba; Article 33 of the Kingdom Act Public Prosecutors Curaçao, Sint Maarten and Bonaire, Sint Eustatius, and Saba.

¹⁹ Amendment to the Protocol on specialized investigative cooperation between the countries of the Kingdom, 23 January 2019

²⁰ Article 2 of the Kingdom Act Coast Guard for Aruba, Curaçao and Sint Maarten and for the public entities Bonaire, Sint Eustatius, and Saba.

America on November 20, 1992, concerning cooperation in the detection, seizure, and confiscation of the proceeds and aids to the commission of a crime and the distribution of confiscated property. Accordingly, this Kingdom Act of March 17, 1994,²¹ was established.

□ Kingdom Act approving and implementing the San Jose Convention (cooperation in combating illicit traffic in narcotic drugs and psychotropic substances by sea and air in the Caribbean).²²

This Kingdom Act of February 20, 2010, determines the cases in which the criminal laws of the countries of the Kingdom will apply to anyone who, in the Caribbean region, outside the Netherlands Antilles and Aruba respectively, is guilty of any of the offenses defined in the countries' criminal laws under article 3, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

2.5.3 Interregional agreements

- *Mutual arrangement*

The mutual arrangement for reinforcing border control is specifically intended for Sint Maarten.²³ To promote an orderly and successful reconstruction of Sint Maarten, monitoring of the inflow and outflow of people and goods at the borders was intensified. For this purpose, the Netherlands provided additional assistance from the Royal Marechaussee (Dutch Military Police-KMar) and the Netherlands Customs.

- *Protocols*

Several protocols exist between and within the organizations involved in the fight against drugs in the Caribbean Kingdom. For this investigation, the Protocol on the deployment of the KMar, with which the Netherlands, Curaçao, Sint Maarten, and Aruba established their cooperation, is of added importance. With the 'Protocol on the Deployment of Personnel from the Flexible Deployment Pool Royal Marechaussee', a 43-strong flexible deployment pool (flex-pool) of KMar personnel has been operational since 2008. In recent years, the flex-pool has been continuously extended for a specified period. By signing the new protocol in January 2019, the parties agreed to continue the cooperation under the flex-pool for an indefinite period effective January 1, 2020. Based on the experiences of the past few years, permanent deployment of the KMar is considered necessary. This flex-pool carries out border-related police duties, wherever additional staff capacity or transfer of knowledge and skills is required. The fight against border-related drug crime is explicitly included as one of the primary tasks.²⁴

2.6. National laws and regulations of Sint Maarten

Illegal preparation/manufacturing/possession of and/or (facilitating) trafficking in narcotics (drug crime) is punishable in Sint Maarten under the *National Ordinance containing regulations regarding opium and other narcotics, as well as regarding substances that affect the state of consciousness of people*.²⁵ The penalties provided for in this National Opium Ordinance range from life imprisonment or fixed-term imprisonment not exceeding twenty-four years, to a fine not exceeding six million two hundred and fifty thousand guilders, or any combination of these penalties. The Prosecutor's Office's Guideline for Criminal Procedure for Opium Crimes establishes the tenets of the prosecutor's criminal procedure policy.²⁶ According to several interviewees, the National Opium Ordinance needs updating. This law

²¹ Trb. 1993, 5

²² Trb. 2003, 82 and Trb. 2004, 54

²³ Mutual arrangement between Sint Maarten and the Netherlands referred to in article 38, paragraph 1, of the Charter of the Kingdom of the Netherlands for strengthening border control of Sint Maarten, stcrt 2017, 72542.

²⁴ Protocol on the deployment of personnel from the flexible deployment pool Royal Marechaussee, January 24, 2019

²⁵ 19-04-2013, A.B. 2013, GT no. 800.

²⁶ Prosecutor's Office Guideline on Opium Crimes as of December 1, 2018

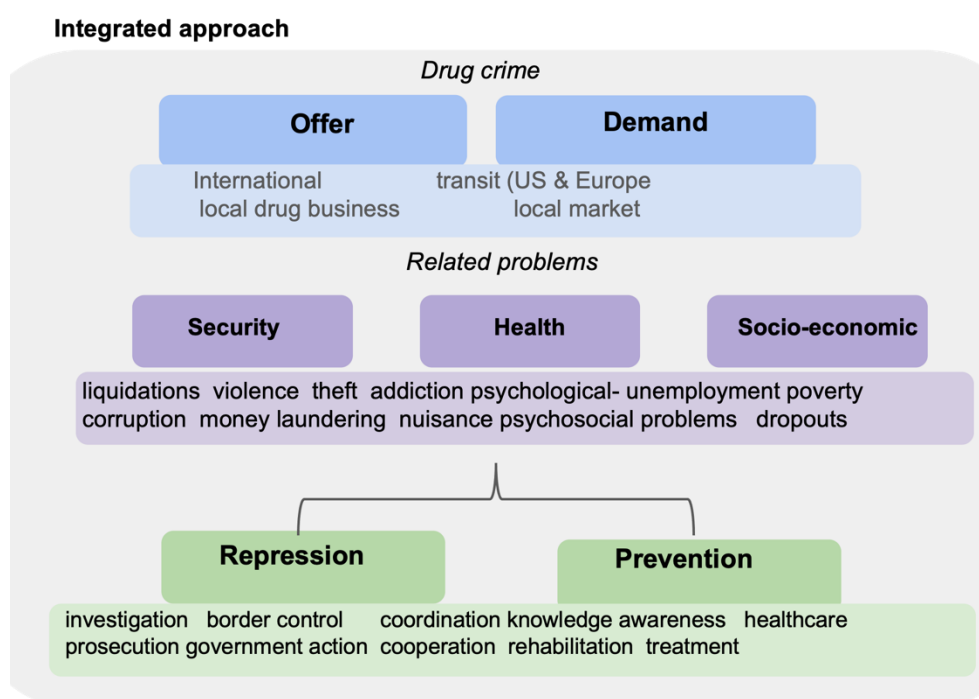
was adopted from the Netherlands Antilles and is therefore outdated. The (fight against) the drug trade and drug use has undergone rapid transformation in recent decades, with the emergence of new types of drugs and the amendment (accordingly) of international regulations. These revised international regulations must be incorporated into Sint Maarten's national legislation. The very limited (virtually non-existent) legislative capacity constitutes a bottleneck in this regard, according to the Ministry of Justice.

2.7. Council's analysis

In this chapter, the Council describes the results of the desk research undertaken to answer sub-questions 1 and 2 of this inspection: *What is the nature and scope of drug-related crime in the countries within the Kingdom? and What are the minimum requirements for combating drug-related crime in and between the countries within the Kingdom based on national and international laws and regulations?*

Sources studied by the Council indicate that the international trafficking of cocaine and cannabis is especially problematic in the Caribbean. While the exact volume and impact on countries are difficult to determine, a significant portion of the drugs destined for the U.S. and Europe are smuggled in different ways via the "Caribbean route". Also, there are only estimates regarding the prevalence of drug use in the Caribbean, of which cannabis use emerges as the most common. In the next chapter, the Council will elaborate on the nature and scope of drug crime and drug-related problems in Sint Maarten.

To tackle the drug problem, an integrated approach is needed which reduces supply and demand while addressing security, health, and socio-economic factors. This calls for both repressive and preventive measures, which in turn requires cooperation and coordination at the national and international levels. Such an approach is codified in various international treaties to which countries are signatories and are translated into the policy strategies of the U.S. and Europe. The Council summarizes this as follows:



The Council notes that various laws, regulations, and policy documents devote attention to drug enforcement within the Caribbean part of the Kingdom. The importance of interregional and international cooperation is consistently emphasized. The Council believes that to achieve this, the outdated national opium legislation must be aligned with the latest international regulations. In the following chapters, the Council will review how the local approach in Sint Maarten, and the interregional and international approach, is structured in practice and to what extent it meets the standards contained in (inter)national laws and regulations governing the prevention and suppression of drug crime and drug-related problems.

3. Research results Sint Maarten

3.1. Introduction

To answer the central and sub-questions of this inspection report, this Chapter includes and analyzes the findings on Sint Maarten. The Council interviewed respondents from various organizations (see Appendix 1), toured the air- and seaport of Sint Maarten, and reviewed (scientific) publications/reports on drug crime and related issues.

3.2. The nature and scope of drug crime and drug-related problems in Sint Maarten

3.2.1 Drug crime

The exact magnitude of the demand for and trade in drugs is not known. Drugs are a contraband commodity and Sint Maarten performs a hub function along several smuggling routes. When examining drug crime in Sint Maarten, this hub/transit function for drug trafficking represents the biggest problem, according to the interviews and sources studied by the Council.²⁷ Typical for Sint Maarten is the traffic in marijuana and cocaine, primarily originating from South America whether smuggled via the surrounding islands to the United States or Europe. In addition, according to the Public Prosecutor's Office and the KPSM - although to a much lesser extent - XTC is present, primarily originating from the Netherlands often smuggled via other islands (within the Kingdom). Cocaine and XTC are (to the best of the judicial organizations' knowledge) not manufactured or prepared in Sint Maarten. Some cannabis cultivation does occur locally but in small quantities, for example, a small home plantation intended for personal use or the local market, but not for large-scale international trade.

Sint Maarten is part of the 'Caribbean route', as explained in Chapter 2. According to the justice partners interviewed and information from the DEA, Sint Maarten serves as an important link for cocaine smuggling to the United States via Puerto Rico and the US Virgin Islands, among others. Using (go-fast) boats, very large quantities of drugs are smuggled through Sint Maarten monthly.²⁸ Drugs are also smuggled through airports and (sea) ports, on passenger flights, private planes, sea containers, cruise ships, yachts, mail, and cargo. This impression is confirmed by the large drug seizures that occur with some regularity.²⁹ According to respondents, significant quantities of drugs in shipments, especially via boat, reveal the reliance that criminal organizations have placed on the route through Sint Maarten. Only a small fraction is expected to be intercepted. According to interviewees, there are no new trends in the nature (types of drugs) or modus operandi (smuggling method) of the drug trade on Sint Maarten in recent years. Although the exact scope is not clear, in the opinion of respondents, there is no discernible increase or decrease in the drug trade either, judging from the number and size of drug seizures conducted each year.

Compared to the trade for the international market, the drug business at the local level is small, according to respondents from the judicial chain. Nevertheless, in addition to being a transit point, Sint Maarten is the destination for some drugs. Specifically for marijuana, the local market is substantial, according to respondents. Local drug use also primarily involves marijuana, cocaine, and, to a lesser extent, XTC (especially among young people).

²⁷ UNODC World Drug Reports; INCB Annual reports; INCSR report 2019; Annual Reports Public Prosecutor Sint Maarten; Crime Pattern Analysis Sint Maarten 2011; Clarke, C.P. (2015)

²⁸ INCSR report 2018; 2019

²⁹ Annual reports Public Prosecutor's Office Sint Maarten; Annual reports Coast Guard; The Daily Herald press releases 26-5-2017: 'Coast guard patrol intercepts [go-fast] vessel with money and drugs' [424 kg cocaine]; 16-7-2019: 'Customs seizes 337 kilos drugs' [336 kilos of marijuana and 1 kilo of cocaine]

Interviewers noticed that local use among minors seems to have increased further in recent years. Marijuana is widely and openly used by young people and traded among them both on the streets and at school.³⁰ According to respondents, it increasingly seems to be socially accepted, or as one youth worker interviewed said, “youngsters consider marijuana as old and soft, it’s normal just like a cigarette”. One possible explanation given for the increase in drug use among minors (in addition to various social problems) is that they are intentionally recruited by adults to buy or sell drugs. KPSM's understaffing and (after Hurricane Irma)³¹ the closure of the juvenile correctional facility (MLC)³², - which resulted in a noticeable lack of a criminal justice response to juvenile crime in recent years-, seemingly contributed to this. According to one interviewee, young people are allegedly offered a small amount of drugs in return for their services. These practices make them more likely to be exposed to drugs, which in turn encourages their use. Additionally, respondents working in youth services indicated that frequent misuse of -and trade in- prescribed medications, such as Adderall (ADHD) and Xanax (antidepressants), is problematic among young people. This portrayal is not acknowledged by the KPSM, the Turning Point Foundation, and the Inspectorate of Public Health, Social Development and Labor (VSA). The VSA Inspectorate is however familiar with Ritalin abuse among students. This is easy to monitor because it is available only by prescription. Some students used foreign (fake) prescriptions to get Ritalin, according to the Inspectorate.

3.2.2 Drug-related problems

When considering drug-related problems, the respondents indicated that, on one hand, these were minor public order or criminal offenses involving drug use, such as nuisance or theft by drug addicts/users. On the other hand, it involves serious or very serious crimes related to drug trafficking, such as violent retribution or liquidation within the drug business. For example, in 2011 and 2012 Sint Maarten was captivated by the (up to that time) largest criminal investigation ever: investigation ‘Vesuvius’. The case had an unprecedented scope and impact. Five people were liquidated in 2011 in a very violent, drug-related gang war. Most occurred in broad daylight, in public places. In the process, two civilians were injured by stray bullets. In October 2012, seven suspects were simultaneously put on trial. They were suspected of leading/participating in a criminal organization for trafficking in narcotics, illegal possession of firearms, and committing capital crimes. In the Court of First Instance, the two main suspects were sentenced to life imprisonment, in accordance with the prosecution's demand. The other defendants were sentenced to prison terms ranging from six to twelve years. As a result of a partial acquittal on appeal, the life sentences were commuted in 2013 by the Court to 30 years imprisonment.³³ According to the KPSM, it is not always possible to prove that capital crimes are drug-related. Two years ago, the number of suspected drug-related liquidations was again high, and several arrests were made. In December 2018, Sint Maarten’s Court of First Instance, for the first time in a long while, convicted two suspects for such a liquidation (Broccoli investigation). Both suspects were sentenced to 25 years in prison.³⁴ In June 2019, another life sentence was imposed by Sint Maarten’s Court of First Instance in a separate case involving a drug-related payback. The defendant, in this case, was convicted of manslaughter and murder of two victims, disposing of the bodies and escaping from prison. This suspect was already serving a 21-year prison sentence for a prior homicide. After escaping from prison, he committed these two capital offenses in 2016, both of which were related to drug trafficking.³⁵

Furthermore, drug smuggling is often associated with the smuggling of other illegal commodities such as weapons or illegal cash shipments. Corruption and money laundering are also part of drug-related

³⁰ Please refer also to: Merckx, E. & Buurman, L. (2016); RvdR (2016): ‘Prevention of juvenile crime in Sint Maarten’; Crime pattern analysis Sint Maarten (2011)

³¹ Please refer also to: RvdR (2016): ‘Prevention of juvenile crime in Sint Maarten’

³² MLC has reopened as of August 2019

³³ Public Prosecutor’s Office Sint Maarten Annual reports 2012 and 2013; rechtspraak.nl: ECLI:NL:OGHACMB:2013:40

³⁴ Public Prosecutor’s Office Sint Maarten Annual report 2018; press release 12-12-2018 ‘25 years for the murder of Franky Brunache’

³⁵ Rechtspraak.nl: ECLI:NL:OGEAM:2019:32

problems in Sint Maarten. The courts regularly hear cases against corrupt officials or employees who are guilty of (facilitating) international drug trafficking.³⁶ According to the Public Prosecutor's Office and the Financial Intelligence Unit (FIU), large sums of criminal assets from drug trafficking are laundered in Sint Maarten.³⁷

In addition to nuisance and criminal offenses related to drug crime, the use of drugs adversely affects the socioeconomic development and public health in Sint Maarten.³⁸ As part of this inspection, the Council spoke to several support organizations. Respondents from the Turning Point Foundation (TPF) believe that the addiction problem in Sint Maarten when measured against the number of inhabitants, is comparable to other countries. The Council requested annual figures from the TPF (in support of this claim) during the inspection but did not receive the data. According to the Mental Health Foundation (MHF), drug addiction is a serious problem in Sint Maarten.³⁹ Virtually all crises for which the MHF is called in are drug related. Excessive drug use causes people to experience psychosis and pose a danger to themselves and/or those around them. In the first quarter of 2019 alone, there were 141 crisis interventions. The TPF and the MHF encounter the problem-use of all kinds of drugs: LSD, molly (type of XTC), marijuana, cocaine, alcohol, and combinations, but no heroin. Recently, the MHF has noticed a growing number of new cases. Not only residents of Sint Maarten but also tourists who become psychotic due to drug use. Drug use/addiction, which leads to mental health problems, occurs in all walks of life. MHF also noted that drug users/patients in their care are increasingly younger. In addition to drug use/addiction, other factors also play a role. It is estimated that about 50% of the local patients struggle with poverty and other family problems. School dropout and unemployment rates are found to be high among drug-abusing youth and adults.⁴⁰ The Ministry of VSA confirms the portrayal of increasing mental health problems in Sint Maarten and the underlying assumption that these are (partly) drug-related. However, the latter has not been investigated and therefore cannot be asserted with absolute certainty. If there is a correlation with substance abuse, it could be concluded, based on the extent of current mental health problems, that the drug problem has intensified, the ministry said.

³⁶ To illustrate: The Daily Herald, press release 10-09-2014: 'Customs officer receives 7 years for drug trafficking'; and 18-03-2019: 'Three years demanded for 10 kilos of cocaine' [PJIA baggage-worker]

³⁷ Please refer to: Crime pattern analysis Sint Maarten (2011)

³⁸ Refer to: Merckx, E. & Buurman, L. (2016); RvdR (2016) 'Prevention of juvenile crime in Sint Maarten' and 'Treating individuals with an addiction or behavior disorder [...]'; CBA Sint Maarten (2011)

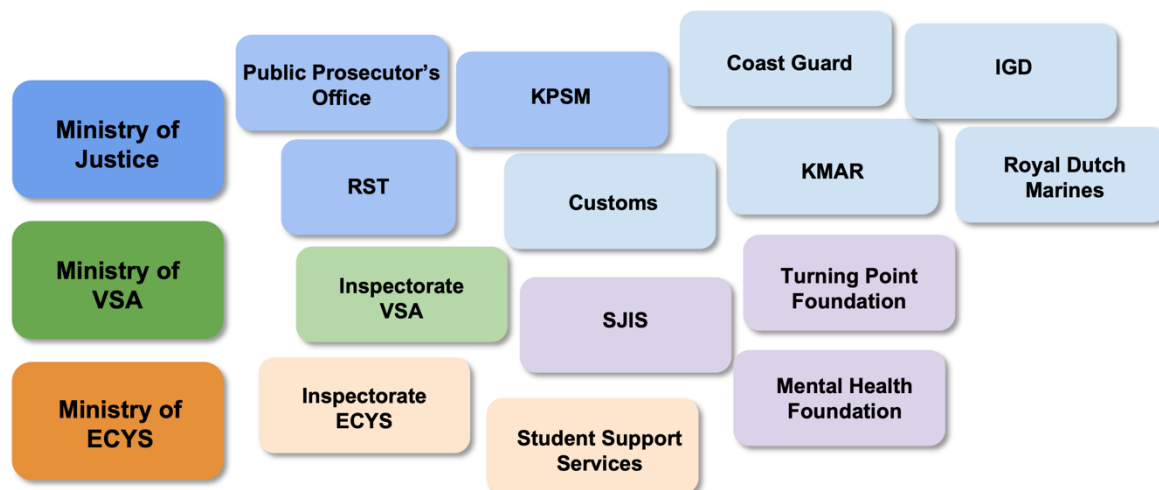
³⁹ The TPF and the MHF have been designated by the Ministry of VSA as facilities for carrying out tasks in respectively the area of addiction and mental health care.

⁴⁰ Please refer to: Merckx, E. & Buurman, L. (2016); RvdR (2016): 'Prevention of juvenile crime in Sint Maarten'; Crime Pattern Analysis Sint Maarten (2011)

3.3. The approach to drug crime and drug-related problems in Sint Maarten

3.3.1 Relevant ministries, organizations, and collaborations

The different ministries, organizations, and foundations with a primary role in addressing drug crime and drug-related issues in Sint Maarten are listed below:



The Ministry of Justice is responsible for, among other things, the establishment and monitoring of policies, laws, and regulations concerning crime-fighting and prevention; the justice system, the judiciary, and the Public Prosecutor's Office.⁴¹

The Ministry of Health, Social Development and Labor (VSA) is responsible for, among other things, developing and monitoring laws, regulations, and policies on public health, health care, social development, social affairs; and oversight of the implementation and quality of public health, health care.⁴²

The Ministry of Education, Culture, Youth and Sports (ECYS) is responsible for, among other things, the preparation, implementation, and monitoring of laws, regulations, and policies on education and youth issues, facilities, and programs; to benefit youth development, focusing specifically on youth who have or are experiencing difficulties. The Inspectorate of ECYS supervises this, and the Student Support Service is charged with, among other things, helping (counseling, advising, and guidance) students and parents to effectively complete the development process.⁴³

The National Opium Ordinance entrusts officials of the Police and Prosecutor's Office, the Inspectorate of Public Health, Social Development and Labor (VSA), and Customs with the supervision of the enforcement of its provisions.⁴⁴

⁴¹ National decree containing general measures for the subdivision and further development of the Ministry of Justice, 21-02-2013, AB 2013, GT no. 44

⁴² National decree containing general measures for the subdivision and further development of the Ministry of Public Health, Social Development and Labor, 21-02-2013, AB 2013, GT no. 75

⁴³ National decree containing general measures for the subdivision and further development of the Ministry of Education, Culture, Youth and Sports, 21-02-2013, AB 2013, GT no. 52

⁴⁴ Art. 9 National Opium Ordinance, 19-04-2013 A.B. 2013, GT no. 800

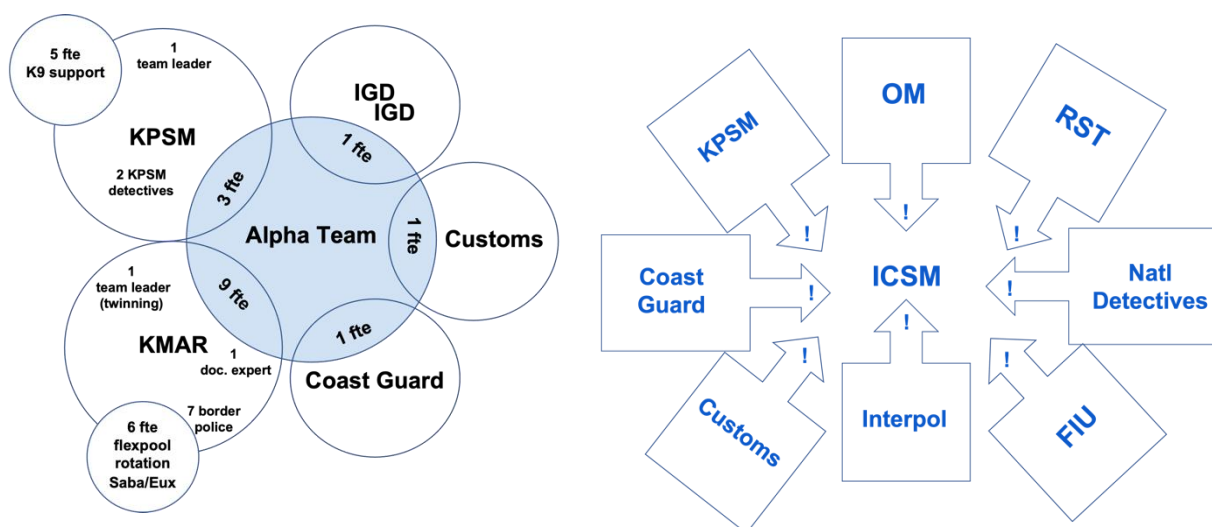
The Public Prosecutor's Office holds the authority for investigations executed by the KPSM, RST, the Coast Guard, and Customs, and is responsible for the criminal enforcement of the rule of law through the investigation and prosecution of criminal offenses, such as drug crime and related offenses.⁴⁵

The Inspectorate of VSA is responsible for, among other things, supervising, reporting to, and advising the Minister on public health matters in the broadest sense, both on request and unsolicited, and contributing to international cooperation in the fight against the illegal trade of narcotics and psychotropic substances and chemicals.

Customs, the Coast Guard, Immigration and Border Protection Service (IGD), the KPSM, and the KMar have roles in providing border control of goods and persons in Sint Maarten and combating cross-border crime such as international drug trafficking. The Royal Netherlands Navy also contributes to the enforcement of international law in the overseas parts of the Kingdom and organizes counter-narcotics operations in the Caribbean.

The Foundation for Judicial Institutes of Sint Maarten (SJIS, formerly SJIB), the Mental Health Foundation, and the Turning Point Foundation perform activities in psychiatric and/or addiction treatment, information, and advice, and (probation) supervision and monitoring, either imposed by the court or otherwise as part of special conditions of the Public Prosecutor's Office.

According to the interviewees in Sint Maarten, to prevent and combat international drug trafficking, two collaborative efforts are important: the multidisciplinary Alpha Team and the Intelligence Center Sint Maarten (shown graphically below).



The Alpha Team was established in early 2017 to strengthen border surveillance at Sint Maarten's airport, Princess Juliana International Airport (PJIA), under the guidance of the KPSM. Every Monday, the Alpha Team conducts a briefing at PJIA in which colleagues from the UMM, PJIA security, and the French Police Aux Frontières (PAF) participate. During this briefing, and on a case-by-case basis thereafter, the relevant information is shared so that operational cooperation can be pursued if necessary. For the seaport, there is a consultation every two weeks with representatives of the Alpha Team, Maritime Service, Coast Guard, Customs, KPSM (Info Unit; CID; TCI; Border Control and Immigration Services), the UMM, port security, Security Service Sint Maarten and the PAF. Part of the Alpha team will soon be deployed at the seaport.

⁴⁵ Rijkswet Openbare Ministeries; Rijkswet Politie van Curaçao, Sint Maarten en Bonaire, Sint Eustatius & Saba

The Intelligence Center Sint Maarten (ICSM) is a partnership involving the following parties: the KPSM, Interpol Sint Maarten (NCB Philipsburg), the FIU, the Public Prosecutor's Office, the Customs Service, the National Detectives Agency, the Coast Guard Caribbean through the Resource Center (*Steunpunt*) Sint Maarten and the RST. Unlike the Alpha Team, the ICSM is not a separately formed team where people collaborate daily (physically) on location. The representatives of the information services involved work closely with each other by collecting and linking information, both on request and on an unsolicited basis. The day-to-day coordination is the responsibility of the KPSM's Head of Information Unit. Following a pilot phase in which the organizations primarily invested in establishing the relationship, trust, and knowledge of their respective operating procedures, the ICSM was formalized in June 2019 with the signing of a cooperation agreement thus securing its future. This agreement provides the partners with the freedom to exchange information and expertise (within existing legal frameworks). Each partner's tasks can be carried out in a more focused manner and products and services can be jointly developed.⁴⁶

3.3.2 Combating international drug trafficking

- *Border Control*

Interviewees stated that to combat (among other things) international drug trafficking that transits Sint Maarten, the strengthening of border control has in recent years been addressed. To deploy the limited capacity most efficiently, the organizations assigned to border control (Customs, Coast Guard, IGD, KMar, KPSM, in association with the Alpha team or otherwise) strive to operate -as much as possible- in an information-driven fashion with the aid of risk analyses and intelligence information. Information gathered by these organizations is aggregated in the ICSM and (ideally) enhanced, where appropriate and possible, with intelligence from the other affiliated agencies. As previously indicated, the ICSM exists for only a short time; according to most respondents, the process of information sharing, and enhancement is still in its infancy. Considering the flow of drugs from South to North, air and maritime traffic from South America is of particular concern to the agencies with a border control mission, according to interviewees.

- *Surveillance of international drug trafficking*

Whenever Customs discovers drugs during a search, the Public Prosecutor is contacted based on the case (size of the haul; the identity of the suspect). According to interviewees, Customs handles small cases on its own with confiscation and possibly a fine.⁴⁷ When a large discovery is made, the recovered drugs and the official report are transferred to the KPSM via the Public Prosecutor (via the Alpha team or otherwise). Respondents indicated that Customs does not have the authority, capacity, or expertise to investigate large-scale cases. According to the National Ordinance on Import, Export, and Transit, punishable offenses subject to remand in custody or pre-trial detention, or for which the Head of Fiscal Affairs considers it desirable to prosecute, are in any event to be referred to the Prosecutor via the Head.⁴⁸ But according to interviewees, no standard policy exists that defines when Customs will transfer a case, instead this happens at the discretion or initiative of the KPSM. Customs Sint Maarten is severely understaffed and, by its admission, currently has insufficient specialized expertise. At the time of this inspection, only 4 of the 22 (operational) customs officers had undertaken a complete customs training course. The others attended part of the BAVPOL course, and these colleagues are now being offered a complete BAVPOL course. Respondents indicated that in-depth knowledge concerning the investigation of opium crimes is presently very limited. Taking the limited capacity into account, Customs was unable to perform a significant number of postal inspections over the past three years.

The lack of security at the port and screening of shipping containers is a point of concern. Furthermore, respondents indicated that the supervision of the many coves in Sint Maarten continues to be problematic, as there are a great many locations where drug smugglers can enter and leave the country

⁴⁶ Public Prosecutor's Office Sint Maarten press release 14-6-2019: 'Intelligence Center Sint Maarten formalized'

⁴⁷ National Ordinance on Import, Export and Transit, Chapter IX 'Prosecution and Penalties'. 16-06-2014, AB 2014, GT no. 4

⁴⁸ National Ordinance on Import, Export and Transit, Chapter IX 'Prosecution and Penalties'. 16-06-2014, AB 2014, GT no. 4, article 217

undetected. Interviewees stated that large quantities of drugs are primarily transported by sea, not by air. The Coast Guard has been working on the acquisition of shore-based radar systems for some time now within the framework of the 'Reinforcement of border control in Sint Maarten'.⁴⁹ In the meantime, mobile shore radars are available on the Windward Islands, in anticipation of establishing permanent shore radar capabilities beginning in 2021.

Furthermore, almost all respondents mentioned the lack of cargo screening at the airport as a vulnerability in border control. This was also evident during the Council's site visit at the airport. This issue, according to the respondents, is the subject of discussion in the AVSEC (Aviation Security) consultations in which the Public Prosecutor's Office, KPSM, Customs, PJIA management and security, and airline representatives participate. Currently, options are being explored to purchase a cargo scanner to be made available at Customs or Airport Security for cargo screening. The KPSM and the Public Prosecutor's Office prefer a scanner for Customs. The Customs authorities inspect based on a broader security perspective, specifically the security of the country Sint Maarten, and in that context, they have far-reaching legal authority. Airport security, according to interviewees, focuses exclusively on the security aspect of the airport and air traffic.

According to respondents from the justice agencies, the difference in perspective and underlying interests is evident across various topics included in the AVSEC consultations. Although this consultation has existed for quite some time, it convenes at irregular intervals and, according to the Public Prosecutors' Office and the KPSM, has not yet produced any systematic improvements in security. Several security risks have been identified. The representatives of the airport indicate that they are 'working on it', however at the time of this review there was no discernible improvement. In mid-2018, the Public Prosecutors' Office prepared an administrative report on the security at the airport and a presentation was made to, among others, the Governor and Prime Minister of Sint Maarten. This resulted in the intensification of contact with the airport. In addition, the airport is currently undergoing reconstruction, where other countries and e.g., representatives of Schiphol have requirements. This increases the urgency somewhat but there is still the impression among some respondents that airport representatives use the AVSEC to claim that 'security consultations are being addressed'. Everyone at the table mentions security, but the airlines nevertheless have predominantly commercial interests that do not always coincide with the security interests. The consultations are intrinsically motivated from a security perspective but are not yet truly productive for the reason mentioned above, according to interviewees.

While limitations still exist in terms of funding, capacity, expertise, and materials, respondents reported that the quality of and cooperation between agencies performing border control functions has improved in recent years. Along with the strengthening of international cooperation undertaken by the Coast Guard with the implementation of the San Jose Treaty (as explained in chapter 2), the establishment of the Alpha Team, the expansion of the Division of Border Control and Immigration Surveillance of the KPSM, as well as the additional assistance from the Kmar and the Dutch Customs through the "Mutual arrangement for the strengthening of border control on Sint Maarten" also contributed to this process. In the beginning, cooperation within the Alpha team was not immediately seamless. Particularly with Customs, trust in the multidisciplinary team (considered to be 'Customs' field of work) had to grow. These problems have now been solved and the Alpha Team is functioning better. According to the respondents, the strength of the Alpha team lies in its ability to combine different authorities and optimally deploy them. The expansion to the seaport to reinforce border control is considered a positive development. However, as far as is known, this (scope) expansion will not be associated with an increase in capacity, even though, according to those involved, there is a need for this. Housing is another point of concern. The office space of the Alpha team at the airport leaves a lot to be desired and at the seaport no office space is available; the mobile work unit of the police is temporarily being used.

⁴⁹ Refer to 2018 Annual Report Coast Guard of the Kingdom of the Netherlands in the Caribbean

The activities of the Customs and Coast Guard cease after the suspect(s) are apprehended, their drugs seized, a brief interrogation and a report is prepared, and the case is either processed internally or transferred to the KPSM. They also share relevant information with the KPSM. Customs and the Coast Guard rarely if ever receive feedback on the follow-up (investigation) performed by the KPSM, but respondents indicate their need for such feedback as valuable information may emerge from the interrogations which could influence the operations of the agencies.

- *Investigation and prosecution*

The Public Prosecutor decides in consultation with the local steering committee and the coordinating detective officer whether a (major) drug case will be pursued further. In the past, the KPSM operated a specific team charged with combating drugs. However, this team no longer exists and has not for some years. The smaller investigations are divided among the General Investigation Department. Large-scale drug investigations are carried out by the 'zwacri (major crimes) team', currently consisting of local detectives, detectives from RST, and the Dutch Police. However, the capacity of the 'zwacri team' is limited and regularly must be dedicated (also) to other serious crimes. As a result, not all cases can be addressed. According to one interviewee, the limited capacity, and the distribution of drug investigations across different detective teams negatively impacts the build-up of information and expertise. According to the KPSM, there are plans to allocate capacity within a special weapons and drug crime team in the future.

It is widely known, according to the respondents, that many individuals are involved as facilitators in the international drug trade transiting Sint Maarten. To achieve the greatest impact, the KPSM and the Public Prosecutor's Office want to infiltrate the drug trafficking organizations and deal with these "bigger fish". In Sint Maarten, however, the possibilities for using special investigative means, such as infiltration or use of Crown witnesses, are very limited. Besides the lack of expertise, capacity, and financial resources, it is difficult to implement these measures given the island's small scale. These factors complicate the ability to penetrate a criminal network unnoticed and/or to guarantee the safety of undercover officers or informants. To effectively tackle organized crime, however, such investigative tools are considered necessary by respondents.

Another approach, according to interviewees, is to frustrate international drug trafficking transiting Sint Maarten by creating barriers using financial criminal investigations. In this context, the Public Prosecutor's Office works closely with the Financial Intelligence Unit (FIU or in Dutch, MOT). The FIU concentrates on fighting corruption, the entanglement of the underworld, and the regular world,⁵⁰ plus, in Sint Maarten, tax evasion, drug trafficking, and human trafficking are priorities. It is important, according to interviewees, to align the priorities of the investigation and the FIU. At present, cooperation depends to a large extent on the knowledge and management of financial investigations of individual officers. According to some interviewees, however, financial investigations do not address the root of the problem of international drug trafficking (the demand for and supply of drugs) at all.

3.3.3 Combating local drug crime

Besides combating international drug trafficking, the investigative agencies also focus their attention on combating drugs in the local (user) market. While Customs' focus is on the border, it can perform inspections throughout the island. For example, Customs sometimes cooperates with the KPSM in 'domestic' drug inspections. Previously, there was a multidisciplinary team similar to the Alpha team that undertook such inspections on the street. This was successful, according to the KPSM, but this team was disbanded for certain reasons (unclear to the respondent). Drugs are regularly found and seized during arrests and searches of homes or vehicles, but proactive drug surveillance, besides at events, does not take place.

⁵⁰ This was globally prioritized at The Egmont Group's September 2018 plenary meeting

During Carnival in Sint Maarten, a special events policy has been used since 2015. For the use, possession, and trade of (soft) drugs, a transaction list is established and a so-called equivalent retaliation approach (*“lik op stuk beleid”*) is applied. For offenses included on the list, the Prosecutor's Office offers the option of immediately striking a deal (settlement). If the settlement amount is paid immediately, the Public Prosecutor does not initiate prosecution. If the settlement proposal is not accepted, a summons will be issued for a court hearing, or the defendant may be remanded in custody. During Carnival, KPSM randomly deploys the dog brigade in the Carnival Village, to search for the presence of narcotics in cooperation with the Customs Department.⁵¹

Several respondents report having received tips on drug trafficking around schools. Social workers wonder why this is not more strictly controlled. Specifically for minors, the possession of the so-called user quantity of cannabis (0-5 g) is subject to prosecution, to support the social welfare services.⁵² This policy, in the view of respondents, is not widely used in practice and monitoring of drug use/possession among both minors and adults is minimal.

According to KPSM, investigating local drug crime is difficult because it is rarely reported. Residents often have information about local drug dealers, but they are reluctant to report a crime to the police because of (family) relations or because of fear for their safety. One interviewee stated that citizens do not have enough trust in the police. Reporting to the police is not always done anonymously, although there is an anonymous hotline (9300), it is not used because of the fear that it is not anonymous. Sometimes police officers are directly informed by citizens (who personally know and trust them), but these citizens otherwise want to remain anonymous and do not want to report the crime themselves through the appropriate channels. This poses a dilemma for a particular officer: either he discloses his informant so that the information can be used, or he keeps the informant anonymous but then cannot use the information at all. In both cases, the outcome results in a breach of trust. According to the respondent, greater investment is required to improve the trust of citizens, including education. The district police officers could be used for this purpose, among other things.

The problem of misuse of prescription medication, as has been mentioned, is not recognized by all agencies. Recently, however, the inspectorate of VSA and the American University of the Caribbean drafted a protocol to identify and prevent the misuse of Ritalin among students, and the inspectorate called on doctors to be more discerning when handling (foreign) prescriptions for Ritalin.

3.3.4 The approach for drug-related problems

A serious crime resulting from international drug trafficking is subject to tough criminal prosecution, as the examples in section 3.2.2 show. Crimes involving the loss of life (those that constitute a serious breach of the rule of law) have the highest priority when it comes to investigation and prosecution, and very high prison sentences have been demanded and imposed in criminal cases involving assassinations in the drugs trade over the years. Other types of crime related to drug trafficking, such as corruption and money laundering, also attract the attention of the justice agencies. For example, the 2014 Annual Report of Sint Maarten's Prosecutor's Office contains the example of a case in which, because of a drug bust, the defendant's spending was subjected to further investigation. It turned out that they had invested in various, mostly newly established companies in Sint Maarten. Cars were purchased in cash for a rental car company and a complete woodworking company was equipped with new machines. The expenditures could not be justified from legitimate income, which pointed to an illegal source of income. False invoices from an existing company, among others, were used to attempt to cover up the laundering operation. The case was brought to trial in late 2014 and the defendants were all convicted of money laundering. The FIU and the Public Prosecutor's Office claim that there is room for improvement in the prevention of money laundering of criminal assets derived from (among other

⁵¹ Annual report of Public Prosecutor Sint Maarten 2015 et seq.

⁵² Prosecutor's Office Guideline on Opium Crimes

things) drug trafficking. To date, for example, casinos in Sint Maarten are not subject to supervision. For years there was talk at the government level of a 'gaming control board', but this never materialized. Supervision is now legally embedded in the recently enacted laws relating to the (international obligation for) anti-money laundering and anti-terrorist financing. Implementation and enforcement at a practical level is the next step, for which qualified supervisors are needed, according to the respondents.

Similarly, to deal with nuisance or lighter offenses related to drug use, the Public Prosecutor's Office and the KPSM - considering the limited capacity - require government policies and enforcement that will contribute to preserving public order. One example is a policy that uniformly regulates the opening hours of entertainment venues. This problem has been brought to the attention of the Minister of Justice in the tripartite meeting; however, at the time of this inspection, no additional action was taken.

Other than the "regular" judicial action in response to criminal offenses, there are no concrete initiatives in Sint Maarten specifically aimed at tackling drug-related problems. According to respondents, both within and outside the judicial chain, preventative policy, adequate addiction treatment, and proper aftercare are absent, with little coordination between the healthcare and justice sectors. The SGs of the Ministry of Justice and the Ministry of VSA confirm that, to date, no cooperation or joint policy exists to combat the demand for and trafficking of drugs and drug-related problems. The Ministry of Justice points to the Ministry of VSA and the Ministry of ECYS for prevention, education, support, and shelter for problem drug use. The Ministry of VSA recognizes the problem but indicates not to be involved for several years in drug-related policies or programs aimed at prevention and/or awareness of drug use. The Ministry of ECYS declined the Council's interview request for this inspection because, in their own words, they are not involved in this issue. A former employee of the MLC indicated that, by virtue of his position there, he submitted several proposals to the Ministry of Justice and the Ministry of ECYS to address juvenile delinquency and related issues such as drug use. These proposals, according to the respondent, focused on cooperation between the MLC, the KPSM, the Public Prosecutor's Office, and the various schools, but no follow-up was ever given to these proposals by the ministries.⁵³

Turning Point Foundation is the only addiction treatment facility in Sint Maarten. TPF offers voluntary inpatient and outpatient care, or care based on criminal justice orders. There are 13 inpatient positions. Several respondents indicated that TPF's services are inadequate to deal with the problem of addiction in Sint Maarten. As a result of the lack of subsidy and the fact that addiction treatment cannot be reimbursed from the health insurance company as it is not recognized as an illness, TPF no longer provides voluntary addiction care. Moreover, there is no forensic psychiatry in Sint Maarten. The Mental Health Foundation reports that the cost for a BIG-registered psychiatrist (which is a legal requirement) is prohibitive for the MHF. According to interviewees, psychiatrists in the Netherlands enjoy a choice of employment and Sint Maarten is unable to make them an attractive offer. Furthermore, physicians are often too specialized for the breadth of healthcare needs. At the time of this inspection, the potential of having a forensic clinic at the MHF was under consideration, following the JVO of July 10, 2019, in which countries were invited to implement the recommendations of the Forensic Care Task Force and design forensic care trials. The legal profession, the Public Prosecutors Office, and the judiciary support the MHF in moving towards a forensic care/tbs unit. According to respondents, a bottleneck is the inability of the Ministry of Justice to guarantee a budget, raising the question of whether this exploration will result in the permanent provision of forensic psychiatry. The problem is acute, however; according to interviewees, psychotic individuals are roaming free who, partly due to their alcohol, cocaine, and/or marijuana use, pose a danger to themselves and their surroundings. Prisons also lack rehabilitation programs, so that detainees with addiction problems do not receive any help.⁵⁴ In this context, the

⁵³ In the rebuttal phase of this report (late 2019), a respondent from the Ministry of Justice indicated that (as far as could be determined) these proposals had not been received for review by the Judicial Affairs Department. Refer also to: RvdR (2016): 'Prevention of juvenile crime in Sint Maarten' and 'The treatment of persons with an addiction problem or behavior disorder [...]'.
⁵⁴ In the rebuttal phase of this report (late 2019), the MHF indicated that they were asked by TPF to assume addiction treatment, the possibility is being explored in consultation with the ministries.

Council refers to its inspection of *'The treatment of persons with an addiction problem or behavior disorder in the criminal justice chain in Sint Maarten (2016)'*.

Most respondents agreed that to effectively address (local) drug crime and drug-related issues in Sint Maarten, it is necessary to also invest in the underlying causes. As one of the respondents put it: "the focus of the approach should not only be on the 'what' and the 'how' questions, also the 'why' needs to be given the proper attention". Interviewees point to several social problems that cause minors and adults to seek refuge in drug trafficking and drug use: poverty⁵⁵, unemployment, school dropout, psychosocial problems due to (childhood) trauma, abuse or domestic violence, inadequate supervision, insufficient awareness, knowledge, and social control and (therefore) a limited social safety net. Only through an integrated approach, in which ministries, agencies, and the community as a whole work together on the causes and consequences of drug crime and associated problems, can real results be achieved, according to respondents.

3.4. Council's analysis

In this chapter, a description of how Sint Maarten's local approach is implemented in practice and the extent to which this approach contributes to combating and preventing drug crime and drug-related problems is presented, thereby answering part of questions 3 and 4. The findings regarding the interregional and international approach are described and analyzed in the following chapter.

The integrated approach to drug crime and related problems requires attention to the supply and demand side of the trade, other types of crime and social factors that facilitate or exacerbate the drug problem, and the impact of drug use on socioeconomic development and public health.

Like the other (island) nations in the Caribbean part of the Kingdom, Sint Maarten is primarily known as a transit country for international drug trafficking via the 'Caribbean Route'. The supply/production side of the illegal narcotics trade is primarily located in South America, and the demand side of the market is predominantly located in North America and Europe. The Council recognizes that because of the large quantities of drugs smuggled (among others) via Sint Maarten, and the international pressure to prevent this, the emphasis of the response lies on the prevention of international drug trafficking at the border. The Council welcomes the various initiatives that have been undertaken in recent years to strengthen border control in Sint Maarten. Although there is certainly still room for improvement and the results in the long term remain to be seen, the Council recognizes a positive development wherein agencies with a border control task are increasingly becoming professional and seek cooperation.

The Council believes there is room for improvement in the coordination of priorities, policy (to the extent that there is any), and operational procedures of the relevant agencies. For example, the provisions defining the framework of the National Ordinance on Import, Export, and Transit have not been translated into policy or integrated into the standard operating procedures of the agencies involved. The fact that the interviewees are not familiar with the handover criteria and determine at their discretion whether and when to escalate a case makes the approach dependent on individual judgments and is therefore vulnerable. Efficient action and correct escalation are essential for investigations, enabling a rapid response where needed. If cases remain at different stages of the justice chain for too long, an effective anti-drug strategy is not served. In addition, several vulnerabilities in the logistics infrastructure were identified in this inspection. In part, those can be attributed to the lack of resources and/or material. Nevertheless, the Council believes that there are also opportunities to strengthen the fight against drugs if intelligent investments are made (for example, in extra camera surveillance), if cooperation between ministries and public-private partnerships can be pursued and if the government takes more decisive action. This requires prioritizing the security perspective within the various forums and not regarding this perspective as an "impediment" to commercial or economic interests. A cursory approach to security

⁵⁵ Also refer to: the SER rapport: "Boost Sint Maarten!" A Conditional Cash Transfers Program to reduce poverty in Sint Maarten (2015)

aspects and an underestimation of the risks of drug crime and drug-related problems can be harmful to commercial and economic interests. The Council considers the Minister of Justice an important figure in this respect, as (s)he can better equip law enforcement agencies to fight drug crime and related problems through political-governmental decision-making and (thereby) ensure that the security perspective is afforded the requisite priority.

The Council concludes that by concentrating efforts to fight international drug trafficking at the border, the efforts to tackle local drug crime and related problems receive insufficient attention. Although drug trafficking for the local market is a fraction of the trade for the international market, this problem should not be downplayed. Sint Maarten is a small island where drug trafficking and drug use certainly cause major problems. While drug crime in and of itself is often perceived as a victimless crime, the nature and extent of drug-related problems in Sint Maarten indicate the opposite. The Council, therefore, considers it essential that the local drug approach in Sint Maarten also receives a boost. Attention must be devoted to the effective prevention of facilitative crime, such as money laundering and corruption, but the youth must not be overlooked either. To gain more insight into the local drug problem, the Council believes it is necessary to invest in the citizens' trust in the police.

Drug trafficking, drug use, and addiction represent a problem at various levels of society. Based on the findings of this inspection, the Council concludes that there is a negative spiral in which drug use and socioeconomic and psychosocial problems are mutually reinforcing. The local demand for and trade in drugs is both the cause and the consequence of this. Considering the serious consequences on an individual as well as a neighborhood/societal level, the Council deems it unacceptable that prevention policies are currently being neglected by the Sint Maarten government. Knowledge and awareness are essential in reducing the demand for drugs. Additionally, addiction treatment needs to be of high quality and accessible to all. The Council concludes from the findings of the inspection that this currently is not the case. The healthcare and justice sectors need to be more closely coordinated; drug problems cannot be solved by repressive action from the justice sector alone.

The investigation reveals that the relevant ministries (Justice, VSA, ECYS) have not assumed responsibility for tackling this issue holistically. To date, no ministry is taking the lead in working together, which means that the required integrated approach is not getting off the ground. The Council shares the opinion that only a comprehensive, multidisciplinary approach can produce effective results. A successful approach involves more than treating symptoms. Ministries, agencies, and the community must work together to address the causes and consequences of drug crime and associated problems.

4. Interregional en international cooperation

4.1. Interregional justice cooperation

4.1.1 Information (intelligence) position and -exchange

The inspection reveals that an up-to-date crime profile regarding the nature and scope of drug crime is not available in individual countries. Inadequate record-keeping is a factor in this process. The countries are working separately to strengthen their intelligence position, but according to interviewees, this is insufficiently extended to the Kingdom level. While countries use the same digital systems (ActPOL and ActBMS), these are not linked and therefore are not used to share information between countries. Information sharing between countries is limited and currently depends a lot on 'parallel lines'. Individuals who know each other call each other. As a result, information remains fragmented, is not made accessible and, according to respondents, it is difficult, if not impossible, to create a complete integrated and interregional intelligence overview based on which the connections between criminal organizations can be deciphered. Consequently, there is also a lack of an interregional perspective on the overall nature and scope of cross-border crime such as drug trafficking.⁵⁶

The Council observes that at the time of this inspection, a first regional overview, commissioned by the Council of Police Chiefs and the Head of RST, (following the updated protocol on collaboration between criminal investigation departments), is being developed. This overview focuses on crime trends in the Caribbean and will subsequently be applied to Aruba, Curaçao, Sint Maarten, and the Caribbean Netherlands. The focus is on the overlap between cross-border crime and local problems. This overview forms the basis for the joint multi-year policy prioritization that was to be presented to the Ministers of Justice of the four countries in January 2020.

When it comes to information, the organizations involved are increasingly leaning towards interregional cooperation, but as one of the respondents described it, "traditionally one prefers to keep one's own information". The review shows that the heads of the information departments of the police forces in the Caribbean part of the Kingdom meet with some regularity within the Heads of Information Organisations Platform. The heads of the information departments from other law enforcement partners, such as the RST, the KMar, the Coast Guard, as well as the Public Prosecutor's Office, and the liaison from the Dutch police are also included. Everyone gets to know each other better and the level of trust grows, which, according to respondents, strengthens the collaboration. In June 2019, a coordinating information officer began working at the Attorney General's Office. This is a new position geared towards the optimization and assurance of the information structure for the entire Public Prosecutor's Office Carib and the linkage of the various intelligence centers (under development). The new set-up of the RST, in terms of operational cooperation and information exchange between the countries, is described as positive by several respondents. RST personnel is employed in the local and core teams and information hubs, and the RST provides technical, digital, and intercept support to the police forces, the core teams of the RST, and other investigative partners from a centrally located location in Curaçao. As a result, a greater focus is needed to combat cross-border crime. Respondents indicated that the results have yet to be seen. The Coast Guard aspires to act in an information-driven manner, although many steps need to be taken before it can optimally do so. For fear of sharing too much information than is technically allowed (in terms of privacy), insufficient information is shared between the countries and the various agencies, according to interviewees from the Coast Guard. They believe this is problematic, as the operation of the Coast Guard depends on the information available, given the large, open border formed by the waters around the islands.

⁵⁶ Refer also to the report 'Exchange of police and judicial data within the Kingdom' (RvdR, 2015/2017) and 'Tackling human trafficking and human smuggling' (RvdR 2019)

Interview subjects from various organizational levels indicate that there is room for improvement in the exchange of information between the Netherlands and the countries in the Caribbean part of the Kingdom. A recent amendment to the Dutch Police Data Act, resulting from the General Data Protection Regulation⁵⁷, has, in their opinion, seriously compromised the exchange of information between the Netherlands and the countries in the Caribbean part of the Kingdom starting in January 2019. With this change, the disclosure of police data to a third country, including Aruba, Curaçao, and Sint Maarten, has become subject to strict requirements.⁵⁸ The principle for providing information to these countries within the Kingdom has been changed to *'No, unless various conditions are met'*. This principle needs to be weighed on a case-by-case basis and prevents an efficient exchange of information. Moreover, according to interviewees, this is contrary to the Charter and the "single Kingdom concept". The inspection reveals that the JVO (in July 2019 and in January 2020) instructed the countries to provide a working instruction regarding the method for sharing police data between the Netherlands, Aruba, Sint Maarten, and Curaçao going forward.

A respondent from the Public Prosecutor's Office reported that in Curaçao, Sint Maarten, and the Dutch Caribbean, the Criminal Procedure Codes do not provide a legal basis for the use of special investigation methods to investigate criminal conspiracies or serious crimes committed in an organized context. This complicates the conduct of special investigations into, for example, international drug trafficking, according to the interviewee. In the Netherlands, this possibility has existed since 2000.⁵⁹ Furthermore, the countries lack digital investigative authority, whereas for the Netherlands the Computer Crime Act III, already entered into force in Europe.⁶⁰ As a result, investigations in the Caribbean are heavily dependent on human intelligence. There are limits to this, partly due to the small scale of the islands. In smaller, closed communities it is more difficult to establish the necessary networks and to generate trust to gather intelligence.

4.1.2 Operational cooperation

Respondents from the justice organizations indicate that cooperation between the countries within the Kingdom at the operational level is under development. They currently describe the cooperation between the countries as 'ad hoc'. The operational departments involved in addressing drug-related crime manage to connect where necessary on specific cases. If an investigation reveals information that is relevant to another country, this information is (usually) shared. Operational bottlenecks are usually discussed and solved on a one-on-one basis or placed on the agenda either via the Council of Police Chiefs or the management team of the Public Prosecutor's Office. The operational cooperation between the Public Prosecutor's Offices of Sint Maarten, Curaçao, and the Dutch Caribbean runs smoothly, according to interviewees.⁶¹

For Sint Maarten, the Vesuvius investigation cited in paragraph 3.2.2 is the perfect example of successful cooperation involving the countries within the Kingdom in the approach to drug crime and associated problems. According to the Public Prosecutor's Office, this investigation was unique given its nature and scope: 'the investigation involved police officers from Sint Maarten, Curaçao, Aruba, Bonaire and the Netherlands'. The investigation lasted 12 months (of which 7 months at full capacity);

⁵⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of individuals regarding the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC

⁵⁸ The European Union Commission has determined that police data may only be provided outside the EU if the Commission has determined that the third country or international organization guarantees an adequate level of protection for the data processing contemplated. The privacy legislation of Aruba, Curaçao and Sint Maarten was found to be insufficiently adequate.

⁵⁹ In accordance with the Dutch Criminal Procedure Code, title V, Special Investigative Powers Act (BOB); see also for St. Maarten the (explanatory memorandum of the) National Ordinance of August 30, 2012, amending the Criminal Procedure Code (Special Investigative Powers and other urgent changes), AB 2012, no. 25, stating the justification for not adopting this authority into the Sint Maarten Criminal Procedure Code.

⁶⁰ This has already been included in the new Criminal Procedure Code for Aruba, Curaçao, Sint Maarten and the Dutch Caribbean, which was recently presented to Parliament in a revised form.

⁶¹ Also refer to the report 'Cooperation with public prosecutors' (RvdR, 2018)

in those 7 months, between 30 and 40 employees worked full time on the case; on the appointed day this increased to approximately 100 persons, including the arrest teams in Sint Maarten, Aruba, Curaçao, and the BES-islands; operations were conducted in 8 different countries (Sint Maarten, Curaçao, Aruba, The United States of America (a.o. St. Thomas), the Netherlands (the Netherlands and Saba), St. Kitts, France (Guadeloupe and Saint Martin) and Anguilla. Some 30 persons were questioned as suspects, 26 of which were arrested; approximately 20 searches were conducted, one of which involved a specialist search team from the Netherlands that was capable of working with ground radar equipment; there were 17 firearms, 600 cartridges, and 6 bulletproof vests confiscated; in addition, various wigs, masks, air guns, and silencers were seized; approximately 200 witnesses were questioned, in different countries (most of them multiple times); the file consisted of 30 binders amounting to approximately 10,000 pages; the investigation was led by two public prosecutors in cooperation with a senior public prosecutor; the indictment included 90 pages.”⁶²

Respondents also indicated that operational cooperation between the countries is constrained by the limited capacity and lack of financial and/or material resources. They indicated that the judicial organizations, especially on Curaçao and Sint Maarten, are fully occupied with local crime-fighting. They also lack the necessary equipment, or their equipment is outdated and in need of replacement, for instance, radar installations that are important for border control and therefore the fight against drug smuggling.⁶³

4.1.3 Strategic cooperation and knowledge-sharing

Interviewees indicated that on a governmental level there is little coordination between the relevant ministries and agencies in the countries on this topic. Developments in policy, the approach, priorities, or trends are shared to a limited extent according to respondents. A commonly heard argument is that "everyone is busy with their own problems".

Within the Public Prosecutor's Office, there has been an improvement in strategic collaboration and knowledge sharing in recent years, according to respondents. Persons interviewed from the Public Prosecutors' Office characterize the current cooperation within the Public Prosecutors' Office Carib as good. The 'Policy program cross-border crime 2016-2020' of the Attorney General's Office offers a strategic multi-year vision on (the prerequisites for) an effective approach and cooperation between Curaçao, Sint Maarten, and the Dutch Caribbean. Partly based on this strategic multi-annual vision, the coordinating detective directs (via the steering groups of the countries) which criminal investigations the Public Prosecutor will handle and advises the Attorney General (AG) accordingly.⁶⁴

As instructed by the JVO meeting of July 11, 2017, the countries within the Caribbean part of the Kingdom, under the direction of the AG, prepared baselines and improvement proposals containing minimum standards to be met by border security and border protection.⁶⁵ According to interviewees, these improvement proposals would contribute to the prevention and suppression of drug smuggling (among other things) in the region. Strengthening surveillance along coastlines is particularly important for combating international drug trafficking, according to interviewees. The investigation reveals considerable goodwill among the organizations involved in border security as well as the establishment of baselines. Respondents indicate that the challenge now lies in the political-governmental sense of urgency and willingness to provide the necessary funding. In January 2020, the definitive action plan for maritime and aeronautical borders was supposed to be ready.

⁶² Public Prosecutor's Office Sint Maarten Annual Report 2012

⁶³ The Coast Guard now has operational mobile shore radars on the Windward Islands, in anticipation of permanent capabilities starting in 2021.

⁶⁴ Also refer to the report 'Cooperation with public prosecutors' (RvdR, 2018)

⁶⁵ Document 'Baselines border security Aruba, Bonaire, Sint Eustatius, Saba, Curaçao and Sint Maarten', Keeping a grip on borders, conference November 21, 2018, first draft for informational purposes.

4.2. International justice cooperation

The treaties the countries are signatories to regarding the prevention and combating of drug crime include international cooperation as an essential element of the approach. With countries outside the Kingdom, cooperation occurs through operational contacts between the investigative bodies and prosecutorial agencies and via international requests for mutual (judicial) cooperation. The investigation reveals that at the operational level, in response to a specific investigation, there is contact with the surrounding (island) nations and the U.S., among others. When foreign suspects are arrested, it is usually easy to contact the authorities of those countries, according to the interviewees. Requests for international mutual judicial assistance are processed through the International Mutual Assistance Center in Sint Maarten, the coordination point for the entire Public Prosecutor's Office Carib. In recent years the Public Prosecutor in Sint Maarten has received an annual average of 75 requests for mutual assistance and has issued about 60 requests for mutual judicial assistance. Most cooperation (more than half of all requests) is undertaken with Saint-Martin. The Netherlands and the United States are close behind, followed by the interregional requests for mutual assistance from Curaçao, Aruba, and the BES Islands. The requests for mutual assistance from the United States often relate to the smuggling of drugs or people, and therefore often require a great deal of investigative capacity. The widespread use of BOB resources (telephone taps, systematic observation, pseudo-buying, and confidential recording of communications) is costly in terms of capacity.⁶⁶

When the KPSM - following an international request for mutual assistance or a so-called "lead-letter" - receives tactical information about international drug trafficking, for example from the DEA or surrounding islands, this information is passed on to the information unit and a criminal investigation team or the Alpha team, and the (potential) follow-up actions are considered under the authority of the Public Prosecutor's Office. In addition, there is a monthly CID consultation with surrounding islands (outside the Kingdom) in which intelligence on international drug trafficking and other cross-border crime is shared. Joint, international counter-narcotics operations are organized on an ongoing basis. For example, in 2018, there was a successful counter-narcotics operation in which U.S. authorities, along with agencies in Sint Maarten, Saint Martin, the Netherlands, and France, were able to disrupt cocaine smuggling from Sint Maarten/Saint Martin to Puerto Rico and the US Virgin Islands. Vessels carrying large quantities of cocaine were intercepted. In total, these activities resulted in the seizure of approximately 1.67 metric tons of cocaine and \$143,000 in cash from drug trafficking.⁶⁷ Douane Sint Maarten is affiliated with 'The Caribbean Customs Law Enforcement Council' (CCLEC) and by its admission has maintained good relations with it. Customs receives information from CCLEC by e-mail, for example about new trends or special interceptions.

For Sint Maarten, the cooperation with Saint Martin/France is of great importance. The relationship between the prosecutors and police officers of Sint Maarten and Saint Martin is solid and, locally, there is a quick operational response. Matters become more complicated when (mutual assistance) requests (e.g., interviewing a suspect) must go through Guadeloupe or France (Paris). According to interviewees, this is often a cumbersome, drawn-out process.

Besides limited capacity and resources which complicate the international approach, legislation or the lack of treaty agreements is also a challenge. For example, Joint Investigation Teams cannot be established between Saint Martin and Saint Maarten because the European Regulations required for this have not been ratified by Sint Maarten. Another example is the lack of an extradition treaty between St. Maarten and Saint Kitts and Nevis; this is a problem for dealing with international drug trafficking because criminals are known to "commute" between these islands. The Public Prosecutor's Office addresses these kinds of problems at the governmental level, in the tripartite meeting with the Minister,

⁶⁶ Jaarverslag OM Sint Maarten 2015 e.v.

⁶⁷ INCSR report 2019

who must then include the issues on the agenda at the Kingdom level, although this often remains unaddressed, according to the Public Prosecutor's Office.

4.3. Council's analysis

The lack of a proper overview of the nature and scope of drug crime within individual countries hinders the formulation of an interregional and international perspective. Information from the various agencies involved in combating and preventing drug-related crime is not systematically exchanged and made available between countries. 'Coincidence, networking, and the willingness to take the initiative' still largely determine whether the information will be exchanged in 2019. The Council would like to point out that in 2015 and 2017, it had already arrived at this conclusion and issued recommendations that remain relevant.⁶⁸

The Council believes that the interregional CBA currently under development could be a first step towards improving the countries' understanding of the nature and scope of drug-related crime. According to the Council, the next important point to consider is whether information from the various countries should be more readily accessible and pooled; the RST core team may play a role in this process. In this respect, the Council believes it is essential that the intelligence agencies within the police forces are enabled to develop a solid information position in (international) drug trafficking.

It further believes that the investigation of drug trafficking stands to benefit from up-to-date and effective investigative authorities, allowing investigative agencies - such as the KPSM and RST - to also in the future undertake investigations into organized criminal conspiracies and make use of, among other things, digital investigative techniques. Therefore, the revised Criminal Procedure Codes that incorporate this detail must be enacted and implemented as soon as possible.

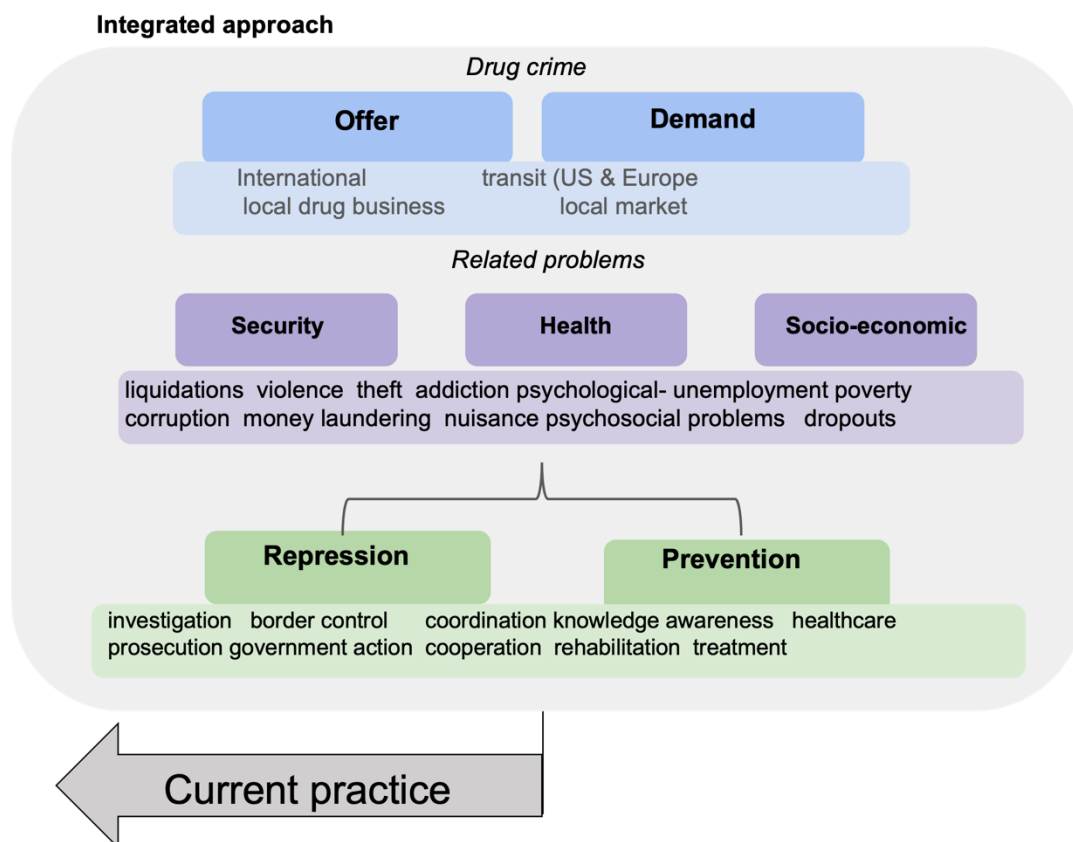
Following a specific case, the agencies manage to connect, constructively collaborate, and exchange information between the countries. International cooperation and joint counter-narcotics operations with the DEA, for example, are also proving successful. In the Council's opinion, the systematic sharing of professional expertise, best practices, and investigative findings concerning drug-related crime and the associated problems needs to be improved.

⁶⁸ Also refer to the report 'Exchange of police and judicial data within the Kingdom' (RvdR, 2015/2017)

5. Conclusion and recommendations

To what extent is the approach to drug crime and drug-related problems in and between the countries within the Kingdom formulated and is the approach contributing to combating and preventing these problems?

The Council has summarized the (inter)national standards for combating and preventing drug crime and drug-related problems as follows:



Based on this inspection, the Council concludes that, within the current practice regarding the local, interregional, and international approach in and out of Sint Maarten, attention is mainly focused on the left side of this spectrum. The approach to combat drugs currently consists primarily of repressive measures from the security perspective (judicial domain) directed at reducing the supply side of the international drug trade. Much less is done to address local drug-related crime and associated problems, nor is there much in the way of a preventive policy that incorporates healthcare and socio-economic aspects to reduce the demand for drugs.

The Council consequently recommends the following to the Minister of Justice of Sint Maarten for enhancing the approach against drug crime and drug-related problems:

1. Update the National Opium Ordinance.
2. a) Encourage the Intelligence Center Sint Maarten to develop a solid intelligence position with regards to drug crime.
- b) Promote - in connection with the above - joint efforts by the countries to build an interregional and international intelligence position with regards to drug crime.⁶⁹

⁶⁹ In the report on the approach to human trafficking and human smuggling the Council issued a similar recommendation.

3. Promote uniformity and continuity in the operational cooperation by ensuring that priorities, policies, and operational agreements are established, adopted, and known in the field (e.g., on the timing of escalation and transfer or feedback between organizations).
4. Ensure that vulnerabilities in the logistics infrastructure (including security at the air- and seaport) are resolved expeditiously.
5. Encourage and implement the necessary political-governmental decision-making that will enable law enforcement authorities to improve the fight against drug crime and related problems and invest in public-private partnerships, affording the security perspective the requisite priority.
6. In collaboration with relevant ministries and authorities, establish a task force and regular consultative meetings to boost the fight against and prevention of drug crime and drug-related problems in Sint Maarten.
7. Develop and formalize a strategic vision and take the initiative to establish inter-ministerial policies where security, healthcare- and socio-economic aspects are coordinated.
8. In the short term, organize a prevention and awareness campaign together with colleagues from other ministries.
9. In collaboration with colleagues from other ministries, identify opportunities for improving the quality and accessibility of high-quality (drug) addiction treatment.

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UNODC World Drug reports

INCB Annual reports

INCSR reports

DEA National Drug Threat Assessments reports

EU Drug Markets Report 2019

Appendix 1

List of Respondents:

- Ministry of Justice
- Ministry of Public Health, Social Development, and Labor
- Public Prosecutor's Office
- Sint Maarten Police Force
- RST
- Coast Guard
- KMar
- National Police
- Customs
- Inspectorate of Public Health, Social Development, and Labor
- Turning Point Foundation
- Mental Health Foundation

Colophon

Law Enforcement Council

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