



**SECOND FOLLOW-UP INSPECTION INTO THE
IMPLEMENTATION OF THE RECOMMENDATIONS
CONCERNING THE SINT MAARTEN CRIME PREVENTION
FUND**

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Law Enforcement Council

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List of abbreviations used

Abbreviation

Meaning

BZK	Home Affairs and Kingdom Relations
CF / fund	Crime Prevention Fund
KPSM	Sint Maarten Police Force
LV CF	National Ordinance Crime Prevention Fund
Act. S-G	Acting Secretary-General
SOAB	Foundation Government Accountants Bureau
TBO	Anti-corruption Taskforce

Preface

A crime prevention fund (hereinafter: CF/ fund) can play an important role in combatting crime. For, it is the intention that the proceeds from the fund are used to finance projects in that respect. The financial revenue can be used for new projects. One condition is that such a fund is well managed and properly utilized, because it concerns public funds.

In April 2019, the Law Enforcement Council (the Council) published the report: *'Het criminaliteitsbestrijdingsfonds Sint Maarten. Onderzoek naar de financiering door het criminaliteitsbestrijdingsfonds in Sint Maarten'* (translated: *The Sint Maarten Crime Prevention Fund. Inspection into financing by the crime prevention fund in Sint Maarten*). In several aspects, it appeared that there were no basic conditions for a well-functioning fund. In its report, the Council made six recommendations to the Minister of Justice. An initial review revealed that of those six recommendations, only one was acted upon at the beginning of 2021. Of the remaining five recommendations, one was partially acted upon. As a result, the Council recommended to the minister *'to implement the five recommendations not yet (fully) acted upon and in that respect, to make the necessary resources available in the shortest time possible'*.

At the request of the Minister of Justice as part of the Sint Maarten Country Package – to designate an independent entity to monitor the compliance with the agreements – the Council mapped out the state of affairs in 2022 again. The results of this follow-up inspection are found in this report.

Although the five outstanding recommendations have still not yet been fully implemented, the Council is of the opinion that most of these recommendations will surely be acted upon in the shortest time possible. This will definitely be the case, if the legislative process is given priority. In the meantime, the Council also suggests to temporarily halt the (applications for) financing of (new) projects pending the completion of the projects initiated. In this report you will read what the preceding statement is based on.

The Council would like to thank the organisations and individuals involved for the constructive manner in which they cooperated with the inspection.

THE LAW ENFORCEMENT COUNCIL

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Summary and recommendation

Summary

Introduction

In 2019, the Law Enforcement Council (the Council) published a report with six recommendations for the Crime Prevention Fund (CF/ fund).¹ Subsequently, the Council reviewed the follow-up of those recommendations in 2021, of which only one recommendation had been followed. As part of the strengthening of the rule of law, the Sint Maarten Country Package (2020) includes as a measure that the administration and monitoring with regard to the CF must be put in order. To this end, Sint Maarten must follow the recommendations regarding the CF previously made by the Council. An independent entity also had to be designated to monitor compliance with the agreements. In that respect, a number of deadlines were also set. At the request of the Minister of Justice, the Council is that independent entity and, in that context, the Council conducted this follow-up inspection in 2022.

The following are the five recommendations by the Council:

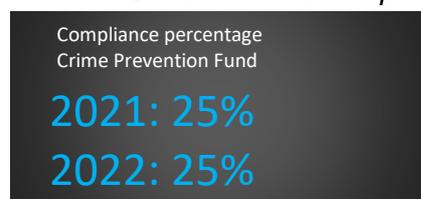
- consistent fulfilment of legal obligations;
- develop an up-to date policy;
- lay down rules and safeguards in a national ordinance regarding risks;
- raise awareness about the fund;
- improve the physical and digital administration/registration.

Of these five recommendations, only the last one was partially followed at the beginning of 2021. No follow-up was given to the remaining four recommendations.

2022 General conclusion

Based on this follow-up inspection, the Council found that the state of affairs did not change by mid-2022. In its 2021 report, the Council also displayed the degree of follow-up of the recommendations by means of a compliance percentage.² This has remained unchanged and is still at 25% in 2022.

Table 2: State of affairs compliance percentage of follow-up recommendations CF



Overall view

Although the recommendations were not followed up, the Ministry is taking steps in the desired direction for the CF. Positive developments can be noted. In several inspections, the Council made recommendations to improve the administration of the CF. The Council previously already noted that in the follow-up of its recommendations - as was observed for several topics – particularly, prioritisation, control, cooperation and provision of information

¹ For a detailed explanation of the fund, see the Council's 2019 report: '*Het Criminaliteitsbestrijdingsfonds Sint Maarten. Onderzoek naar de financiering door het criminaliteitsbestrijdingsfonds Sint Maarten*'.

² The compliance percentage as an indicator is calculated by assigning 1 point to each recommendation followed, ½ point to each recommendation partially followed, and no points to a recommendation not followed. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

were missing. That seems to have changed – even though this is via a different route than the usual one.

By agreeing on a timeframe for the follow-up of the Council's recommendations as part of the Country Package, Sint Maarten and the Minister of Justice gave priority to the follow-up of the recommendations made by the Council regarding the fund. However, the Council stresses the importance of (more) realistic deadlines and a proper justification and compliance with them in order to avoid delays.

The Council also points out that the five recommendations that were not followed are interrelated. Once the processes, particularly related to legislation and policy have been completed, the other recommendations will also be able to be followed up relatively quickly. Furthermore, the Council is of the opinion that it is a good development that cooperation with the Foundation Government Accountants Bureau (SOAB) was sought and the Council points to the filling in of certain (essential) functions for the administration of the fund.

Based on the above, the Council holds the view that at least the vast majority of the recommendations will have been followed up in the shortest time possible. Especially, if the legislative process is given priority. For, prioritisation and continued attention are important conditions, especially in view of the time frame that has already elapsed. In the meantime, the Council proposes to temporarily halt the (applications for) financing of (new) projects pending the completion of the processes initiated.

Recommendation

Recommendation

In view of the current state of affairs, the Council reiterates its 2021 recommendation: *'Implement the five recommendations of the Council that have not yet been followed up and in that respect, make the necessary resources available in the shortest time possible'. In the meantime, the Council also suggests to temporarily halt the (applications for) financing of (new) projects pending the completion of the processes initiated.*

Table 2: Overview state of affairs recommendations

Recommendations on the Crime Prevention Fund to the Minister of Justice	Status 2021	Status 2022
Fulfil the legal obligations arising from the National Ordinance on the Crime Prevention Fund on a consistent basis. In this respect, at least, give follow-up to the recommendations already made by the Council for the fund. This relates to: "When submitting the annual budget, include a policy plan listing the projects that qualify for funding by the Crime Prevention Fund" and "to this end, ensure that a steering committee for the fight against crime be established and involve the latter in the administration of the Crime Prevention Fund".	Not followed	Not followed
Establish up-to-date policies for the crime prevention fund. In doing so, take into account the criteria, processes and procedures regarding the application, the processing, the granting of project requests, and (the justification of) decisions in this respect and, if relevant, include the necessary definitions.	Not followed	Not followed
Lay down rules and safeguards in a National Ordinance in order to limit risks of improper use and misuse of the Fund.	Not followed	Not followed
Ensure that the physical and digital administration/registration with regard to the submission, assessment, granting and payment of projects is complete and ensure that the corresponding procedures and documents, resulting from the applicable legislation and policies are complied with and are obtained in a timely manner..	Partly followed	Partly followed
Ensure that all claims for the benefit of the crime prevention fund are (re)paid.	Followed	-
Raise more awareness about the crime prevention fund.	Not followed	Not followed

1. Introduction

1.1 Introduction and reason

Introduction

In April 2019, the Law Enforcement Council (the Council) published the report: '*Het criminaliteitsbestrijdingsfonds Sint Maarten. Onderzoek naar de financiering door het criminaliteitsbestrijdingsfonds in Sint Maarten*'. (Translated: '*The Sint Maarten Crime Prevention Fund. Inspection into the funding by the crime prevention fund in Sint Maarten*').³ In this report, the Council made six recommendations to the Minister of Justice. In 2021, the Council examined the follow-up on the recommendations in the context of the crime prevention fund. From this it appeared that of the total of six recommendations, one recommendation was followed up (repayment claims fund), one recommendation was partially acted upon (physical/digital administration and compliance with the fund procedures) and four recommendations were not acted upon (fulfilment legal obligations, developing policy, establishing a national ordinance and raising awareness about the fund). The Council recommended that priority should be given to the follow-up of the recommendations.

Reason

In the Sint Maarten Country Package of December 2020, one of the measures included as part of strengthening the rule of law is that the management and supervision of the crime prevention fund should be put in order. To this end, Sint Maarten should follow up on the recommendations from the reports made by the Council in the context of the crime fund. A number of deadlines were also set. By 15 June 2021, an independent entity had to be designated to monitor compliance with the agreements made. A number of recommendations were to be acted upon in the short term, before 15 August 2021. The timeframe for follow-up actions would be determined based on the implementation agenda pertaining to the Country Package. In addition, an independent entity had to be designated to monitor compliance with the agreements. At the request of the Minister of Justice, the Council is that independent entity and, in that context conducted this follow-up inspection in 2022.

1.2 Research question

The main question of this second follow-up inspection reads as follows:

To what extent were follow-up and implementation given to the five recommendations of the Council on the crime prevention fund in Sint Maarten that were not implemented?

³ For an elaborated explanation about the fund, see the 2019 report of the Council entitled: '*Het Criminaliteitsbestrijdingsfonds Sint Maarten. Onderzoek naar de financiering door het criminaliteitsbestrijdingsfonds Sint Maarten*.' (Translated: '*The Sint Maarten Crime Prevention Fund. Inspection into financing by the crime prevention fund Sint Maarten*').

In this respect, it concerns the following five recommendations that were not (fully) followed:

Recommendations Crime prevention fund to the Minister of Justice	Status 2021
Fulfil the legal obligations arising from the National Ordinance on the Crime Prevention Fund on a consistent basis. In this respect, at least, give follow-up to the recommendations already made by the Council for the fund. This relates to: "When submitting the annual budget, include a policy plan listing the projects that qualify for funding by the Crime Prevention Fund" and "to this end, ensure that a steering committee for the fight against crime be established and involve the latter in the management of the Crime Prevention Fund".	Not followed
Establish up-to-date policies for the crime prevention fund. In doing so, take into account the criteria, processes and procedures regarding the application, the processing, the granting of project requests, and (the justification of) decisions in this respect and, if relevant, include the necessary definitions.	Not followed
Lay down rules and safeguards in a National Ordinance in order to limit risks of improper use and misuse of the Fund.	Not followed
Ensure that the physical and digital administration/registration with regard to the submission, assessment, granting and payment of projects is complete and ensure that the corresponding procedures and documents, resulting from the applicable legislation and policies are complied with and are obtained in a timely manner.	Partly followed
Raise more awareness about the crime prevention fund.	Not followed

1.3 Demarcation

This inspection is a follow-up inspection, focusing on the way in which the Minister of Justice gave follow-up to the previous recommendations of the Council.

1.4 Assessment framework

In this follow-up inspection, the Council examined the extent to which the Minister of Justice gave follow-up to the 2019 recommendations, of which, it was noted in 2021, that they had not yet been followed up. Consequently, those recommendations form the assessment framework for this inspection. In this inspection, in addition to the follow-up on the recommendations referred to, the Council also paid attention, where relevant, to developments following the publication of the report in January 2021.

Moreover, the Minister of Justice did not provide any (substantive) response to any of the Council's previous reports on the Crime Prevention Fund. Had that been the case, the Council would have been able to include its contents in its research.

1.5 Research approach and methodology

The research began with an orientation of the subject based on previous reports of the Council and other relevant documents available to the Council. Based on that orientation, a plan of approach was drawn up. Interviews were held with representatives of the Ministry of Justice, the Public Prosecutor's Office⁴ and a member of the legal profession⁵. In addition, the Council also compiled a questionnaire regarding the five recommendations which were not yet (fully) acted upon. The Council distributed this questionnaire to the Sint Maarten Police Force, the National Detective Department, the Sint Maarten Foundation for Judicial Institutions, the Court of Guardianship, the Prison, the Department of Immigration and Border Control, the Customs, the Coast Guard and the Bureau Unusual Financial Transactions (MOT). These organisations were requested to describe the state of affairs regarding the recommendations – to the best of their knowledge. And questions were asked about any project proposals submitted and any other developments that may be of importance to the CF. The Council received a response from the Sint Maarten Police Force and the Court of Guardianship within the deadline set. The

⁴ With input by telephone from the policy officer of the Solicitor General's office.

⁵ Part of the revenue of the fund has to do with the sale of goods confiscated by final judgement, and of objects withdrawn from circulation, dispossession of proceeds obtained through criminal offence and the collection of fines.

fact that no feedback was received from the other organisations does not affect the findings in the report as such, because the organisations have no direct (legal) role in the fund. Subsequently, the Council analysed the information obtained in the manner described above and prepared a draft report containing the actual findings. This draft report was presented by the Council to both the Ministry and the departments involved for feedback. Subsequently, the Council processed the feedback given in response and adopted the report.

1.6 Reading guide

This report is structured in the following manner. Following the introductory Chapter 1, the results of the inspection and their assessment are presented in Chapter 2. For each recommendation from the 2019 report, the recommendation is first described, followed by the findings from the 2021 report and subsequently, the results of this follow-up study in 2022 are presented. After that, an assessment always follows. Chapter 3 contains the final conclusion and recommendation.

2. Research results: state of affairs recommendations Crime Prevention Fund

2.1 Introduction

In this chapter, the Council describes the five recommendations from the 2019 report that were not (fully) followed up and the related findings from 2021. The Council also presents the findings of this second follow-up inspection in 2022. Finally, there is an assessment at the end of each paragraph.

2.2 2022 State of Affairs Crime Prevention Fund

The state of affairs for each recommendation in 2022 is shown below.

To the Minister of Justice:

Recommendation 1: Fulfil the legal obligations arising from the National Ordinance on the Crime Prevention Fund on a consistent basis. In this respect, at least, give follow-up to the recommendations already made by the Council for the fund. This relates to: *"When submitting the annual budget, include a policy plan listing the projects that qualify for funding by the Crime Prevention Fund" and "to this end, ensure that a steering group for combatting crime be established and involve the latter in the management of the Crime Prevention Fund"*. The recommendation is classified by the Council in its database under the category 'policy'⁶.

2021 Findings

The Council notes that this recommendation was not followed. The recommendation consists of a general recommendation to fulfil the legal obligations on a consistent basis. In any case, the recommendation on the obligations with regard to the policy plan and the budget must be followed up. This also applies to the recommendation on the steering group for combating crime. No policy plans and budgets are being prepared and the steering group for combating crime has not been established. There is little substantial progress in terms of compliance with the legal obligation to monitor, manage and control with the use of the Fund, which entails the necessary risks.

⁶ The Council classifies recommendations in categories in the context of its overall review. For a further detailed explanation, see the 2021 Law Enforcement Council's report entitled: *'Algehele review aanbevelingen. Deelonderzoek 2: Criminaliteitsbestrijdingsfonds, opsporings- en vervolgingsbeleid OM, tenuitvoerlegging van geldboetes, schadevergoedingen en ontnemingen, het OM in de incidentgerichte opsporing en samenwerking tussen parketten OM'*.

2022 Findings

CF Legal obligations

According to the National Ordinance establishing the CF the Minister manages the Crime Prevention Fund.⁷ Under the supervision of the Minister of Justice, the Director of the Judicial Affairs Department is entrusted with the day-to-day management of the fund. At present, no Director of the Judicial Affairs Department has been appointed and the acting secretary-general (Act. S-G) who is acting as the head of the Judicial Affairs Department, is handling the fund. More specifically, monitoring the progress in the context of the follow-up of the recommendation in question.

According to the Act. S-G the annual submission of the budget is not yet accompanied by a policy plan, because the ministry would like to complete three processes first. The Ministry of Justice has engaged the Foundation Government Accountants Bureau (SOAB) to support the Ministry in this respect. This concerns support for drafting a policy plan, compiling a manual (see [recommendation 2](#)) and adapting the National Ordinance on the Crime Fund (see [recommendation 3](#)). The progress of the agreements made – including those on the fund – is monitored quarterly by means of the implementation agenda as part of the Country Package. In the last published document (1 July – 30 September 2022) the envisaged results are stated that as of 1 September 2022:

- the policy plan and manual are adopted;
- the financial administration is set up;
- the implementing organisation is established and is in place; and
- the evaluation is completed and the project is finalized.⁸

The Act. S-G notes that the processes are progressing more slowly than hoped for, due to the shortage of (qualitatively well-trained) personnel. As a result, the timeframe agreed upon in the Country Package for the follow-up of the recommendations of the fund will not be met. It is also indicated in the implementation agenda that the project was delayed at the start, but the expectation is that the final deadline will be met.⁹ The (adapted) time frame was discussed by the Council of Ministers in connection with the third quarterly report for the Ministry of the Interior and Kingdom Relations (BZK). For the time being, failure to meet the deadlines agreed upon, in practice, has no (financial) consequences for the budget. For, financing of the aforementioned processes is done from the CF itself.

At the end of August 2022, consultations were held between the SOAB and the Minister of Justice to set the priorities for the policy plan. It is the intention that the policy plan will be finalized before the end of 2022, but achieving that will remain dependent on its prioritisation by the minister. It is also not yet certain whether the policy plan will be ready in time to be added to the 2023 budget. This will certainly be the case for the 2024 budget, according to the Act. S-G. The KPSM is not involved in the policy plan, but has indicated that it would like to be a discussion partner as a stakeholder. The Sint Maarten Police Force is one of the

⁷ Article 4 National Ordinance establishing a crime prevention fund.

⁸ Country Package Sint Maarten. Implementation Agenda 1 July – 30 September 2022.

⁹ During the writing of this report, the implementation agenda for the fourth quarter was published. This includes almost the same contents as the third quarter. However, on the understanding that as an intended result is added that the Steering Committee on combatting crime will be established and set up as of 1 January 2023.

organizations, the activities of which (may) ultimately result in a large part of the fund's revenue.

Pursuant to Article 3 of the National Ordinance Crime Prevention Fund, the fund has different revenues. The income may also consist of a contribution to be charged to the general resources. The Act. S-G points out that in Curaçao the income of the fund also consists of such a contribution besides proceeds from the collection of fines. This possibility has not yet been used in Sint Maarten.

Steering Group

There is no steering group for combatting crime as yet. The Act. S-G indicates that it is the intention to first complete the three processes, so that the basis for the fund is well established. After that, members for the steering group will be recruited. One anticipated bottleneck concerns the appointment of suitable members. In Sint Maarten, you always have to 'fish in the same pond'.

Assessment

With regard to recommendation 1, about the fulfilment of legal obligations, the Council notes that these have not yet been complied with in a consistent manner. More specifically, the obligations with regard to the annual policy plan and the budget were not met. The trajectory to come up with a policy plan did get started in collaboration with the SOAB, but it is in the early stages. The steering committee is not established as yet either. Based on the above, the Council therefore considers that the first recommendation is not followed up as yet.

Recommendation 2: Establish up-to-date policies for the crime prevention fund. In doing so, take into account the criteria, processes and procedures regarding the application, the processing, the granting of project requests, and (the justification of) decisions in this respect and, if relevant, include the necessary definitions. The recommendation is classified by the Council in its database under the category 'policy'.

2021 Findings

This recommendation was not followed up, because no policy was drawn up for the crime prevention fund. No procedures are described for the submission of projects. Similarly, the processes to be followed for the handling of applications are not clear nor is registration consistent. Furthermore, there are no procedures for the monitoring and payment from the fund. There was a need for ministerial frameworks to be able to describe the process surrounding the CF. The fund is not managed adequately by those legally in charge. Furthermore, in practice there is a lack of clarity as to who is responsible for the actual drafting of the policy, processes and procedures for the fund. Consequently, the Ministry was aware of the need to describe processes and procedures for the CF.

2022 Findings

As indicated, the SOAB also provides support with the drafting of a Manual. The SOAB had already embarked on preparing a draft manual for Curaçao. After reviewing the draft, the Ministry of Justice in Sint Maarten did not consider it necessary to reinvent the wheel. The Curaçao draft manual will therefore serve as a basis and will be adapted to the needs of Sint Maarten. As such, the Ministry already provided the SOAB with input for the draft manual for Sint Maarten. According to the Act. S-G., the policy will contain in any case, the 'rules of the game' (for example, how and where a project should be submitted), the work processes, and the procedures. The aim is to have the manual completed before the end of 2022, but this

also depends on its prioritisation by the Minister. The Public Prosecutor's Office indicates that it is aware of the subject and the drafting of policy and that it is the largest 'main supplier' of the fund. As a result, the Public Prosecutor's Office is therefore of the opinion, that it is self-evident that the Public Prosecutor's Office and the relevant judicial organisations will be involved in drafting the policy. Currently, this is not the case.

Assessment

Recommendation 2 concerns the drafting of policies. The process of arriving at policies was initiated in collaboration with the SOAB. The Council considers it a good development that the Ministry chose to make use of existing documents as a basis for its own policy wherever possible. The Council is of the opinion that in any event, the Public Prosecutor's Office and the KPSM, in view of their experiences, would be able to provide a good contribution to the drafting of the policy, and therefore urges the Ministry to involve them in this process. This could be done, for example, by asking them to provide *feedback* on the draft manual. Given the stage of the policy formulation, the Council is also of the opinion that this recommendation was not followed.

Recommendation 3: Lay down rules and safeguards in a National Ordinance in order to limit risks of improper use and misuse of the Fund. *The recommendation was classified by the Council in its database under the category 'legal framework'.*

2021 Findings

This recommendation was not followed up. No national ordinance was established laying down rules and safeguards to limit the risks of improper use and misuse of monies from the fund. During the inspection, it was indicated that the Ministry of Justice saw no need for this. This is because the National Ordinance on CF itself already refers to the Government Accounts National Ordinance and the latter ordinance contains the procedures to be followed. According to the Ministry, in this respect, the National Ordinance on Government Accounts provided sufficient safeguards against improper use of the fund. Similarly, the safeguards laid down in the National Ordinance on Substantive Civil Service Law and the Criminal Code are referred to in this respect.

2022 Findings

The Act. S-G points to the constant dilemma between insufficient financial resources for certain matters versus the fact that there is money in the CF and as a result, it is used for matters for which it is actually not intended.

The SOAB is also supporting the ministry in the process of drafting a proposal to amend the National Ordinance on CF. A draft is currently being worked on, which was discussed between the Ministry and the SOAB in September 2022. In that discussion, the Act. S-G would examine, among other things, whether the Council's recommendations relevant in this context were also incorporated into the draft. The inspectors of the Council were able to view the outline of the draft digitally on site. It concerns an amendment of the 2013 National Ordinance on CF and, for the time being, it includes the following topics: proceeds, organization, possible forms of subsidizing, implementation, assessment, supervision and accountability, and sanctions. The aim is to have the draft completed by the end of this year. Subsequently, for the amendment of the National Ordinance on CF, the prescribed legislative process must be followed. According to the Act. S-G, that is the reason why there is also consultation with the Department of Legal Affairs & Legislation of the Ministry of General Affairs. The legislative process will (could) take a relatively long time (years).

Assessment

In order to limit the risks of improper use and misuse of funds from the fund, the Council recommended to lay down rules and safeguards in a National Ordinance. The process to amend the National Ordinance on CF has started and currently a document containing the intended amendments and additions is being worked on. This document is in its preparation and consultation phase. After that, the prescribed legal procedure must be followed. It will take some time before the amendment of the national ordinance will enter into force. That is why the Council is also of the opinion that the third recommendation is not acted upon.

Recommendation 4: Ensure that the physical and digital administration/registration with regard to the submission, assessment, granting and payment of projects is complete and ensure that the corresponding procedures and documents, resulting from the applicable legislation and policies are complied with and are obtained in a timely manner. The recommendation was classified by the Council in its database under the category 'work processes'.

2021 Findings

The Council assessed this recommendation as being partially acted upon.

Compliance with policy and legislation and role of stakeholders in the fund

It appears that the involvement of the controllers of the Ministry of Justice, the Secretary General of Justice, the Head of Judicial Affairs Department and the Minister of Justice is inconsistent and unclear. No policy is written for the procedures to be followed for the physical and/or digital administration/registration with regard to the submission, assessment, awarding and payment of projects. Nor has it been specifically determined for the fund which documents should be submitted for the approval of projects. The legal principles of the National Ordinance on Government Accounts are applied when submitting projects. Once the process is completed and payment can be made for a project, the payment is properly administered through the bank account of the fund.

Registration and administration system

Currently, the (financial) registrations regarding the fund are mainly kept in three ways, namely via DECOS (not yet consistent), the bank account of the fund and via a partially physical administration (up to and including 2018). At present, the administration system for payments is designed to be more transparent, due to more oversight of the fund's assets and more control over the fund's expenditure. A 'four to six eyes principle' or 'two-step payment' is used. The payments from the fund are still done digitally, which provides more insight. The Ministry expects that the administration of the fund can improve in the coming years. There is still an overview of what is in the fund's account in terms of assets and the aim is to further put matters in order.

The administration of and insight into the inflow of sums of money into the account of the fund deserves more attention. In the context of a sound administration, the facilitation of the administration by others for the benefit of proceeds for the fund is also essential, because this is a matter of all parties involved. These are in particular the KPSM, the registrar of the Court and the Public Prosecutor's Office. Among other things, tracing the source of payments was a bottleneck. Payments for the fund are made via the ATM at the Public Prosecutor's Office and at the bank, at the KPSM and at the Receiver's office. Both the Public Prosecutor's Office and the Ministry of Justice have limited or no knowledge as to what balances are still to be

collected. A request from the Council to the Ministry to receive the current balance of the Fund was not met within the period stipulated.

2022 Findings

Financial administration

According to the Act. S-G, the controller's function no longer has a pivotal role in the physical and digital administration/registration and developments in that context, as was evidenced during the previous inspection. But, the Act. S-G still sees the function of the controller as the keystone to the whole, in view of its controlling function.

The plan is to complete the first phase, which is to amend the legislation and draft the manual and the policy plan. According to the Ministry, in particular the aforementioned manual containing the policy is necessary to be able to set up a sound administration on that basis. Subsequently, the financial administration – in accordance with SOAB's proposal – will be done in the program QuickBooks. The SOAB wanted to embark on this immediately, however, its implementation was postponed by the Act. S-G. The Ministry would first like to have a solid computer(system) on which the program can be installed with corresponding authorizations. Seeing that in the past, too often, important information from the fund got lost. The Ministry also wants to recruit a person who will be responsible for the administration of the fund, among other things. It is expected that the program QuickBooks will be put into use by the beginning of 2023 at the latest.

Inflow of funds

The process regarding confiscated funds (for example, confiscated funds by the Anti-Corruption Taskforce (TBO) and the sale of seized goods) in addition to the Public Prosecutor's Office also takes place through the Court Registrar, because the latter is the custodian of funds and goods under attachment. When a judgment has become irrevocable and the money is forfeited, the custodian will transfer the funds to the CF. According to the Public Prosecutor's Office, this can be complex because sometimes part of the money has to go to the CF and part has to be returned to the suspect. According to the Public Prosecution Service, some things still need to be properly streamlined. There are ongoing discussions about this matter between the Court and the Public Prosecution Service.

Payments intended for the CF are still made in a fragmented way by those who have to pay a fine, for example, at the Public Prosecutor's Office and the Receiver's office. Payments are also made at or through the banks. Payments are no longer made at the KPSM. Among other things, tracing the source of payments was a bottleneck, because often no payment reference was stated.

In the meantime, the Public Prosecutor's Office has been busy identifying the payments received without reference received in the bank account of the Public Prosecutor's Office (escrow account) in the period from 2018 through June 2022. With the exception of a single payment, all payments intended for the CF are known. After everything is sorted out, the monies will be transferred to the CF. In mid-2022, there was already a discussion about this matter between the Ministry and the OM. The Public Prosecutor's Office reconfirmed the agreement previously made with the bank, that no payments will be accepted without a reference. According to the Public Prosecutor's Office, this has improved in recent months, because the Public Prosecutor's Office is getting people at the counter who have been referred for a payment reference.

The PIN Code Device¹⁰ of the Public Prosecutor's Office, linked to the escrow account of the Public Prosecutor's Office, has been defective for quite a long time. It is the intention to link the new pin code device to the bank account of the CF, so that the payments will no longer go through the bank account of the Public Prosecutor's Office. The Public Prosecutor's Office then only has to debit the payment in its own system and process it on the criminal records. The KPSM also points to the benefit of direct payments to the fund. The aim is to put the pin code device into service no later than 1 January 2023. It is the Ministry that has to formally regulate the pin code device. The introduction of the pin code device will be accompanied by a joint media campaign by the Ministry and the Public Prosecutor's Office about the payment of fines, among other things. According to the Public Prosecutor's Office, proper registration remains a prerequisite for all working methods.

Besides the Public Prosecutor's Office, the Receiver's office also receives monies intended for the CF. According to the Act. S-G and the Public Prosecutor's Office, the lack of insight into the exact payments for the fund and whether or not these payments are transferred to the fund, in practice remains a bottleneck. As a result thereof, there may be less monies than should be in the fund's bank account. No specific consultation on the CF is held between the Ministry of Justice and the Ministry of Finance. However, according to the Act. S-G., an overview of CF expenditure was provided to the Ministry of Finance. The Ministry of Finance also hired the SOAB to do an audit of the CF's financial statements this year. The intention is to also include information about the past years. According to the Act. S-G., there is yet to be a discussion between the Ministry of Justice and the SOAB about the revenue and expenditure of the fund.

Administration of projects

The Act. S.G. indicates that she has yet to check with the SOAB whether the administration of the documents relevant to projects can also be kept in the Quickbooks program or whether a separate program is available for that purpose. The purchase and implementation of this program will coincide with the financial administration process.

According to the Ministry of Justice, to date, no one has applied to the fund by means of a project proposal. Besides the Public Prosecutor's Office, for example, based on the questionnaire, two other organisations indicated that they did not submit any projects. Certainly, the Court of Guardianship has a number of proposals for projects in the area of juvenile probation. However, the Court of Guardianship is not aware of the requirements for submitting a project, but would like to know them. The KPSM did not submit any projects either, giving as reason for this, the lack of communication about the fund. Therefore, the KPSM will take a more proactive approach on its own by making project proposals and placing them on its annual agenda, and this year will submit at least one concrete project proposal on communication devices. A lawyer suggested that it would be a good idea to submit a project for a compensation fund for victims and, also in the context of prevention, a project for social housing/assisted living for young people.

Pending the three aforementioned processes, there will be no (temporary) stop on the submission of projects. In the event that a project proposal were to be made at this time, it would primarily proceed through the Minister of Justice. An advice (sheet) is drawn up and, if approved, it is signed by the minister. Subsequently, the funds are made available to the applicant through the usual route associated with the advisory process. After that, halfway through the execution of the project, the applicant must submit a report on the progress of the project. At present, no further conditions have been set on how applications should be dealt with.

¹⁰ In the earlier reports, reference is made of an ATM, whereas pin code device is meant

Assessment

Recommendation 4 concerns the completeness of the physical and digital administration/registration with regard to the submission, evaluation, allocation and payment of projects. This recommendation also addresses compliance with the associated procedures and timely obtaining documents arising from the applicable legislation and policy. The Council notes that the physical and digital administration or registration is still not fully in order and is almost in the same phase as during the inspection in 2021. The role of the controller has been diluted and, according to the Council, should be better utilized again. The further development of the administration and registration is largely on hold pending the finalization of the policy and obtaining the necessary resources. The consequences are currently limited because few to no applications are submitted and possible applications would be handled with caution. However, seeing that the processes of drafting the policy plan and the manual are still ongoing, the Council is of the opinion that it is evident, that the Minister will temporarily halt (applications for) financing of (new) projects pending the completion of both processes. This is to control possible risks of improper use and to prevent (an appearance of) arbitrariness.

Furthermore, the fragmented payment of especially fines is still a problem. Since the Ministry is working on the various processes, the Council is of the opinion that specific attention should also be paid to a solution for this bottleneck that is workable in practice. In this respect, the Council is thinking, for example, of payment at a central point, and of making concrete agreements between all parties involved. In any event, the Council hopes that headway will be made with the pin code device at the Public Prosecutor's Office.

Based on the above, hardly any progress was made on this matter. Therefore, the Council still considers this recommendation as partially followed.

Recommendation 5¹¹: Raise more awareness about the Crime Prevention Fund. *The recommendation was classified by the Council in its database under the category 'service and communication'.*

2021 Findings

This recommendation was not followed up. No initiatives were taken to raise more awareness about the CF by the Minister of Justice or the Ministry of Justice. The last call to the department heads of the implementing organisations under the Ministry of Justice to submit concrete project proposals dates back to 2018. Nevertheless, no new projects were submitted.

2022 Findings

Several organisations indicate that they would like to have clarity about the CF and to be informed about the possibilities to apply for the fund. A campaign to raise more awareness about the CF is currently not part of the aforementioned three processes. This will only be addressed after the completion of all processes, including the legislative process. Consequently, this will still take some time. Similarly, a campaign will have to be financed from the budget by the Ministry of Justice itself, as a result of which funds for this will have to be available in time and must be reserved in the budget.

Assessment

The fifth recommendation concerns publicizing the fund. The Council can follow the reasoning of the Ministry that efforts must first be made to get the basis for the fund in order by preparing a manual before publicizing the fund, because in this way the correct basis can be communicated to all parties involved. However, this means that implementation of this

¹¹ Officially, this is recommendation 6 in the 2019 and 2021 reports.

recommendation will be postponed by the Ministry and will be implemented last. Therefore, the Council also considers this recommendation as not followed.

3. Final conclusion and recommendation

3.1 Final conclusion

Answering the main question

In this follow-up inspection, the Council reviewed the extent to which the recommendations (5 recommendations) identified during the 2021 inspection as not or only partially followed were followed up in 2022. This follow-up inspection shows that the five recommendations have still not been acted upon. Therefore, the state of affairs regarding the follow-up of the recommendations is the same as in 2021. In its 2021 report, the Council also displayed the level of follow-up of the recommendations by means of a *compliance percentage*¹². This has remained unchanged and in 2022, is still at 25%. No progress has been made in terms of following up on the recommendations.

Table 3: State of affairs compliance percentage follow-up recommendations CF



Overall picture

According to the Council, the fact that the recommendations have not been acted upon, does not mean that steps are not being taken in the desired direction for the CF. In several of its inspections, the Council made recommendations to improve the management of the CF. The Council already noted that its follow-up - as was observed for several matters – especially lacked prioritisation, management, cooperation and the provision of information. That seems to have changed – even if this is through a different route than the usual one. At the end of 2020, Sint Maarten and the Netherlands entered into an agreement to implement the measures in the Sint Maarten Country Package. By agreeing, among other things, that the recommendations made by the Council must be followed up within a certain timeframe, Sint Maarten and the Minister of Justice have given priority to the fund. In particular, the implementation agenda that has been drawn up every quarter since April 2021 is viewed by the Council as a big stick in terms of not only realizing actual follow-up of the recommendations, but also in the context of the desired attention to and progress of the follow-up in that respect. For the fund, this means in concrete terms that the recommendations are translated into intended results and that they are provided with a timetable. For the fund, this means in concrete terms that the recommendations are translated into intended results and that these are provided with a timeline. The Council notes however, that meeting deadlines does not only constitute a bottleneck for the Ministry of Justice, but for several other ministries. This also applies to the CF issue. Therefore, it is often not due to unwillingness to meet a

¹² The compliance percentage as an indicator is calculated by assigning 1 point to each recommendation followed, each partially followed recommendation a 1/2 point and no points to an unfollowed recommendation. Then the number of points awarded is divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

certain deadline, but to circumstances in practice that are already known beforehand. However, this certainly leads to understandable frustrations and misunderstandings among the parties involved. The Council therefore points to the importance of agreeing on (more) realistic deadlines and properly substantiating them, so that the agreements made can be complied with in a timely manner.

The Council points out that its five recommendations, most of which were assessed as not followed, are interrelated. This applies in particular to the developments concerning the three processes (amendment of legislation and drafting the policy plan and the manual). Once these are completed, the Council expects that the other two recommendations on the administration/registration and publicizing the fund, can also be completed relatively quickly. The Council notes, however, that despite the willingness to implement the recommendations, the difficult progress of the processes continues to affect the progress of the follow-up of the other recommendations. That finances are a bottleneck is a well-known fact. However, the Council is of the opinion that especially the equipment needed for the administration should be able to be arranged in a relatively simple manner.

Furthermore, the Council is of the opinion that cooperation between all parties involved could be strengthened by making more concrete agreements, for example, in the area of transferring funds.

In view of the limited capacity at the Ministry, the Council is pleased to note that cooperation is sought by calling on the services of the SOAB. As a result, the Ministry does not have to reinvent the wheel every time. This can benefit progress.

The Council already stressed the importance of filling certain (essential) functions. The position of Head of the Department for Judicial Affairs has been vacant for some time. In this respect, the Council emphasizes the urgency to fill this position in the shortest possible time - also in view of the necessary day-to-day management of the fund. Especially given all the upcoming changes due to the different processes for the fund.

Based on the above, the Council is of the opinion that the majority of the recommendations will be implemented in the shortest possible time. Especially if the legislative process is prioritized. This is because prioritisation and continued attention are indeed important conditions, especially given the time frame that has already elapsed. In the meantime, the Council proposes to temporarily halt the (applications for) financing of (new) projects pending completion of the processes initiated. The Council will continue to monitor the developments.

3. 2 Recommendation

With its second follow-up inspection, the Council provided insight into the state of affairs with regard to the follow-up of the recommendations in the context of the Crime Prevention Fund. Based on the above, the Council reiterates its previous recommendation to the Minister of Justice: *Implement the five recommendations of the Council that have not yet been (fully) implemented and make the necessary funds available in the shortest possible time. In the meantime, the Council also proposes to temporarily halt the (applications for) financing of (new) projects pending completion of the processes initiated.*

Overview state of affairs recommendations

Recommendations Crime prevention fund to the Minister of Justice	Status 2021	Status 2022
Comply with the legal obligations arising from the National Ordinance on the Crime Prevention Fund on a consistent basis. In this respect, at least give follow-up to the recommendations already made by the Council for the fund. This relates to: "When submitting the annual budget, include a policy plan listing the projects that qualify for funding from the Crime Prevention Fund" and "to this end, ensure that a steering group for combatting crime be established and involve the latter in the management of the Crime Prevention Fund".	Not followed	Not followed
Establish up-to-date policies for the crime prevention fund. In doing so, take into account the criteria, processes and procedures regarding the application, the processing, the granting of project requests and (the justification of) decisions in this respect and, if relevant, include the necessary definitions.	Not followed	Not followed
Lay down rules and safeguards in a National Ordinance in order to limit risks of improper use and misuse of the Fund.	Not followed	Not followed
Ensure that the physical and digital administration/registration with regard to the submission, assessment, granting and payment of projects is complete and ensure that the corresponding procedures and documents, resulting from the applicable legislation and policies are complied with and are obtained in a timely manner.	Partly followed	Partly followed
Ensure that all claims for the benefit of the crime prevention fund are (re)paid.	Followed	-
Raise more awareness about the crime prevention fund.	Not followed	Not followed

Annex 1: State of affairs recommendations



LAW ENFORCEMENT COUNCIL

2021/2022 State of affairs recommendations report Crime Prevention Fund					
Subject recommendation	Category recommendation ¹³	Primary financial action/ primarily other non-financial action ¹⁴	Follow-up 2021	Primarily responsible for action ¹⁵	State of Affairs > 2022
1. Legal obligations National Ordinance CF	Policy	Primarily financial	Not followed	Ministry of Justice	Not followed
2. Drawing up policy	Policy	Primarily other non-financial action	Not followed	Ministry of Justice	Not followed
3. Drafting National Ordinance	Legal framework	Primarily other non-financial action	Not followed	Ministry of Justice	Not followed
4. Administration / registration	Work processes	Primarily other non-financial action	Partly followed	Ministry of Justice	Partly followed
5. Claims	Enforcement & compliance	Primarily financial	Followed		-
6. Publicity of the fund	Service & communication	Primarily other non-financial action	Not followed	Ministry of Justice	Not followed
Total compliance %¹⁶			25%		25%

¹³ As an indication, the recommendations have been classified into categories in its database by the Council in order to give some more insight into the individual recommendations separately.

¹⁴ Although all recommendations (almost) always have financial consequences, the Council is of the opinion, that a distinction can be made for the purpose of following up on the recommendations by dividing them into those that actually require primarily financial action and recommendations that primarily require non-financial action.

¹⁵ In accordance with the Law Enforcement Council Kingdom Act, all recommendations are formally addressed to the Minister of Justice. For a number of recommendations, follow-up depends primarily on action by the Ministry (the Minister of Justice). For others, follow-up is mainly dependent on action by the organization(s) in question.

¹⁶ The compliance percentage as an indicator is calculated by assigning 1 point to each recommendation followed, ½ point to each recommendation partially followed and no points to a recommendation not followed. The number of points awarded is then divided by the total number of recommendations and multiplied by 100 to arrive at the compliance percentage.

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