

FROM CRISIS TO CHALLENGE

**CONCERNING THE LASTING CONSEQUENCES OF
THE COVID-19 PANDEMIC FOR THE MUNICIPALITIES AND
PUBLIC BODIES OF THE CARIBBEAN NETHERLANDS**



THE COUNCIL FOR PUBLIC

ADMINISTRATION (*Raad voor het Openbaar Bestuur; ROB*) is an independent advisory body to the government and parliament. The ROB advises – when asked or on its own initiative – on the organisation and functioning of the public administration and the policy-related aspects of financial relationships between the central government, municipalities and provinces. Particular attention is paid to the principles of democracy and the rule of law.

STATUTORY BASIS

The ROB was established under the Act of 12 December 1996 (Public Administration Act, Bulletin of Acts and Decrees 1996, No 623). As from 1 July 2017, the advisory function of the Financial Relations Council (*Raad voor de financiële verhoudingen; Rfv*) was transferred to the Council for Public Administration. The Rfv was established under the Act of 21 February 1997.

The **HISTORY** of the Council for Public Administration (ROB) dates to 1960 when the Council for Municipal Finance (*Raad voor de gemeentefinanciën; Rgf*) was established.

The Council for Territorial Decentralisation (*Raad voor de Territoriale Decentralisatie; RTD*) was established in 1965. Both are forerunners of the current Council for Public Administration.

PROCEDURE

Requests for advisory reports can come from all ministries and from both Houses of the States General. The ROB bases its advisory reports on administrative knowledge and experience, state-of-the-art scientific insights and awareness of opinions and insights from society. The ROB also contributes towards the political, administrative and social debate on how the public administration and democracy functions through other activities (lectures, roundtable discussions, conferences, and introductions).

COMPOSITION

The Council consists of a chairperson and eight members appointed by Royal Decree and selected for their expertise and social experience. The Council may also appoint temporary councillors for projects.

STAFF

A compact team supports the ROB. The Secretary and their staff account to the Council for their work.

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From crisis to challenge

Concerning the lasting consequences of the Covid-19 pandemic for the municipalities and public bodies of the Caribbean Netherlands

For two years, the Netherlands and the rest of the world have been gripped by Covid-19. The Covid-19 pandemic and the measures used to counteract it have left a nearly universal mark. By request of the House of Representatives of the Netherlands, the Council for Public Administration¹ (hereinafter: the Council) has been asked to examine the administrative and financial consequences of the Covid crisis for municipalities and the public bodies of Saba, Sint Eustatius and Bonaire. The Council has done so using its *Assessment framework for good governance*. The Council defines the prerequisites of good governance as adequate administrative capacity, upholding the rule of law, and translating citizens' needs into policies in a democratic fashion. Based on the assessment framework and the circumstances of the Covid-19 crisis, the Council focussed on the consequences of Covid-19 for three aspects of municipalities and public bodies: the administrative relations between municipalities and public bodies to other authorities, the legitimacy of local democratic performance and, lastly, the administrative capacity of municipalities and public bodies.

Prolonged crisis mode

The general lesson learned by the Council based on the past two years, is that the Netherlands found itself in crisis mode for a prolonged period of time. Classifying a particular period as a crisis legitimises the prioritisation of decisiveness over democratic legitimacy and rule of law. This kind of sustained prioritisation steadily begins to impair our democratic rule of law, with undesirable consequences for governments and society alike: confused administrative relations between municipalities, regional and national governments, and local democracies that were placed at a distance; the disadvantages experienced by the Caribbean Netherlands due to centralised Covid-19 measures; the great difficulties in matching 'national' Covid-19 rules to the situation experienced by the Caribbean Netherlands, resulting in laborious administrative relations, a remote local democracy, and a decrease in administrative capacity.

Instead of continuing to regard the Covid-19 pandemic as a crisis, it is now time for the public administration to address Covid-19 as a lasting challenge, with a balance struck between administrative capacity, democracy, and

¹ Raad voor het Openbaar Bestuur.

rule of law. It is not the Council's intention to suggest that the Covid-19 pandemic will not have major societal repercussions. The Covid-19 pandemic and its consequences will continue to demand the government's attention, irrespective of how the pandemic develops. Addressing the Covid-19 pandemic and its consequences as a challenge demands that this approach is imbedded within the usual administrative relations, and into a system of democratised framework-setting and control – if not, there may be far-reaching consequences for the state of our democratic rule of law in the long term.

Below are the Council's recommendations for taking the administration and decision-making of municipalities and public bodies out of crisis mode, and for better equipping these municipalities and public bodies to face the Covid-19 challenge.

Towards a new standard of administrative relations

With the advent of the Covid-19 crisis came an unusual time for administrative relations. During the first months of the Covid-19 crisis, the performance of the national government and municipalities as a single government was impressive. The Council is very positive about this performance, but feels the need to draw attention to the major contrast between this constructive and smooth collaboration and the laborious collaboration between the State and municipalities in other arrangements and tasks, with the decentralisation of the Youth Care Reform Agenda being the most glaring example. The fine collaboration during the Covid-19 crisis shows that such laborious affairs, which are costly for governments in terms of time and money as well as detrimental to citizens' trust in their governments, are unnecessary.

Safety regions² were vehicle for Covid-19 measures between March and December of 2020, but the *Safety Regions Act*³ was not equipped to handle a long-term crisis. The extensive authorities of the safety regions and the Safety Consultative Body⁴ ensured a constant emphasis on safety and crisis resolution, even when a point for a broader perspective was reached. The Covid-19 *Temporary Measures Act*⁵ (the Covid-19 act) was an attempt to reinstate normal administrative relations. But the Covid-19 act did not prevent the continuation of the informal role of the safety regions and the Safety Consultative Body. Mutual alignment between mayors is positive, but using these structures as an informal means of decision-making harms local democracy. As such, the Council recommends that the Minister of Security and Justice, heads of safety regions, and mayors practice restraint in making

2 Veiligheidsregio's.

3 Wet veiligheidsregio's.

4 Het Veiligheidsberaad.

5 Tijdelijke wet maatregelen covid-19.

(informal) decisions in the Safety Consultative Body and regional policy teams⁶ without ensuring that these are sufficiently safeguarded by the system of democratic accountability and control.

The year 2020 was a period of particularly prevalent experimentation for both State government and safety regions in terms of centralised management and decentralised deviation. The Covid-19 act allows the Cabinet room to implement different measures for different regions, or to authorise mayors to activate or deactivate measures locally. The Cabinet has made little to no use of this flexibility thus far. The centralistic interpretation of the Covid-19 act has led local administration to experience less options for a customised approach than before December of 2020. With the shift from a crisis approach to the Covid-19 pandemic to approaching it as a more permanent challenge, creating more possibilities for locally specific measures becomes appropriate. As such, the Council recommends that the Cabinet include more opportunities for mayors to activate and deactivate local measures in the Covid-19 Temporary Measures Act.

It was an unusual time for our administrative relations with our neighbouring countries as well. Aligning measures was trying, particularly during the initial months of the Covid-19 crisis; the national measures of one country occasionally took their neighbours by surprise. The closing of the Belgian border suddenly reinstated the relevance of a border that had not existed for many people in their day-to-day lives, with major consequences for families, relationships, work, and security. National governments were not sufficiently attentive to the scale of the differences between neighbouring countries, and the resulting effects on border regions. To improve the alignment between measures in times of crisis, the Council recommends that centralised and decentralised governments collaborate on a good cross-border administrative network. This will make it easier for relevant parties to connect in times of crisis. Where possible, start by designing a consultation structure for international crisis collaborations between national, regional, and local administrations. The sooner the better, as this structure can then be used in times of future (lifting of) Covid-19 measures or during new crises.

Local democracies: bringing deliberation and decision-making closer to the public

The Covid-19 crisis meant that municipal councils were placed at a distance, both because they yielded the stage to local administrations owing to a strongly experienced awareness of the crisis and because of the formal structure of the safety regions. In time, municipal councils began to reclaim their role in the political process, and the Covid-19 act assigned accountability for Covid-19 measures to those councils. The Council recommends that

6 Regionale Beleidsteams (RBT's).

municipal councils resume their role where possible and necessary, and that they take a stronger stance in setting a framework and maintaining control for whatever new challenge or similar prolonged situation.

The Council concludes that the legal framework for a crisis structure should prevent municipal councils from being unable to exact responsibility for indeterminate periods of time, as this creates too great a restriction for local democratic functioning. As such, the Council recommends that the *Safety Regions Act* should include a maximum period for which authorities can be reassigned to heads of safety regions, as well as an accountability requirement for heads of safety regions regarding the use of these authorities.

Soon after the beginning of the Covid-19 crisis, digital conferencing enabled legitimate decision-making at the local level. This method of conferencing also has future prospects in terms of making informative meetings more accessible. However, in terms of quality, digital conferencing has a negative effect on interaction, discussion, and debate. The Council's recommendation to Parliament and the Cabinet is to make physical meetings the norm for all municipal gatherings focussed on democratic discussion and debate in the pending regulation for digital consultation and decision-making. Digital meetings focussed on consultation and decision-making have a negative impact on the quality of local democratic discussion and debate compared to physical meetings. It is the system responsibility of the Minister of the Interior and Kingdom Relations that this quality is safeguarded. For the remaining duration of the *Temporary Digital Consultation and Decision-Making Act*⁷, the Council recommends that municipal councils should prefer physical meetings, particularly if these concern democratic discussion and debate. If physical meetings are not possible in the town hall or equivalent used for these activities, then municipal councils should be aware of the greater importance of a strong local democracy, and be willing to spend funds on the use of an alternative location.

The digital organisation of participation offers opportunities, particularly for meetings designed by municipalities mainly to inform citizens. A different, more diverse group of attendants was seen during digital participation opportunities and processes. The Council recommends that municipalities continue to offer possibilities for digital participation, in tandem with 'offline' possibilities where possible. The importance of human contact with citizens is of great importance, particularly in this time in which faith in governments is under pressure.

7 Tijdelijke wet digitale beraadslaging en besluitvorming.

During the initial months of the Covid-19 crisis, local administrations quickly established digital communications with businesses and societal organisations. Direct contact with residents proved more challenging to realise due to social distancing measures. Many, if not all, municipalities worked hard to organise alternatives to direct contact with citizens, business, and other organisations. The Council recommends that municipalities develop a local focus group that includes district police officers, general practitioners, and business owners with a finger on the pulse of the citizenry, in addition to individual contact.

Administrative capacity: manpower and means for the Covid-19 challenge

The Covid-19 crisis has, and will continue to have, consequences for the administrative capacity of municipalities: the extent to which they are able to govern effectively and perform their tasks adequately. This is based on leadership of local administrations, the capabilities of municipal officials, and municipal (financial) resources.

The Covid-19 crisis has made enormous demands of the administrative organisation of municipalities. Enforcing Covid-19 measures and implementing the payment of aid packages, as well as other aspects, demanded additional efforts from municipal officials. The additional appeal to municipal financial means was compensated by the State, as was loss of income. Parties concerned are generally satisfied in this respect.

The additional issues and challenges municipalities will continue to face due to the Covid-19 crisis are still uncertain. Consequences should be expected for culture and sports, youth care, mental healthcare, informal carer aid, civic initiatives, and the upkeep and improvement of inner cities. The structural financial consequences for municipalities are also difficult to predict.

Local leadership was very important during the crisis, and will remain so once the Covid-19 pandemic is addressed as a challenge. Mayors were subject to great demands from various roles, particularly during the first year of the Covid-19 crisis. The Covid-19 crisis made considerable demands of the efforts and flexibility of local administrations. Among other things, they were asked to redesign their engagement with citizens, businesses, and society organisations, as the regular forms of contact were made impossible due to Covid-19 social distancing measures. Although many councillors felt they were made to watch from the side-lines during the initial months of the Covid-19 crisis, their position to take action and respond to consequences of the Covid-19 crisis for challenges in their portfolio, such as economy and social cohesion, gradually improved.

The Council recommends that Parliament and the Cabinet adequately equip municipalities in terms of finance and authorities to allow them to withstand the consequences from Covid-19 crisis. The State should compensate municipalities for the financial consequences of the Covid-19 pandemic and measures in a similar method as has been established before, and the State should provide municipalities with sufficient assurance of this fact. To determine the means and authorities required by municipalities, the consequences of the Covid-19 pandemic and implemented Covid-19 measures must be monitored carefully.

Recommendations regarding the Caribbean Netherlands

- **Administrative relations**

From March until December of 2020, when the *Covid-19 Temporary Measures Act*⁸ (the Covid-19 act) was implemented, governors and the government commissioner implemented the Covid-19 measures via emergency decrees, to be ratified by the Island Council at their next meeting.⁹ Substantial inter-administrative tensions had existed between the public bodies and the State government even before the beginning of the Covid-19 crisis. Between March and December of 2020, administrative relations continued much as they had, although the Caribbean Netherlands were initially frequently overlooked. Any resulting problems, however, were generally quickly and adequately resolved following coordinated consultation.

With the implementation of the Covid-19 act, the Minister of Health, Welfare and Sport, the Minister of Justice and Security, and the Minister of the Interior and Kingdom Relations decide on changes to the Covid-19 measures via amendments to ministerial arrangements to be ratified retrospectively – a priori since February of 2022 – by the House of Representatives. This has not benefitted the administrative relations between the public bodies and the State government. The pragmatic approach of the public bodies, successfully applied in handling the Covid-19 crisis until the implementation of the Covid-19 act, collided with the bureaucratic processes of the Ministries. To implement changes to Covid-19 measures, civil servants and administrators of public bodies were and are expected to follow the policy cycles of the Ministries which, to the public bodies, are often untransparent. Miscommunications and frustrated expectations frequently led to inter-administrative tensions. As such, the Council recommends that the Cabinet and Parliament make better

8 Tijdelijke wet maatregelen covid-19.

9 The Island Council of Sint Eustatius was not asked to ratify the emergency decrees of the Government Commissioner. Until October of 2020, Sint Eustatius was without an Island Council due to administrative intervention by the State for gross negligence in 2018.

use of a more decentralised approach to the Covid-19 crisis by the public bodies within the context of the Covid-19 act and associated arrangements.

- **Local democracy**

The Covid-19 act also had negative consequences for local democracy in the Caribbean Netherlands. Whereas the Island Council was formerly authorised to ratify emergency decrees, they no longer have any say in the Covid-19 measures that apply for public bodies. As a result, the Council concludes that there is a democratic deficit at the local level: the Island Council cannot implement a framework for, or control, local measures. Input from citizens, businesses, and societal organisations also receives less attention during decision-making. The Council recommends that Cabinet and Parliament allow for more room for democratised framework-setting for and control of corona measures by the Island Councils as part emphasising a more decentralised approach to the Covid-19 crisis by the public bodies.

results of public bodies in addressing communication and participation regarding Covid-19 measures – and these efforts and results are made all the more impressive considering the fact that formal participation was not (yet) commonplace for the public bodies. The Council recommends that the possibilities for participation established and reinforced by the public bodies during the Covid-19 crisis be made a structural component of policy development, and that the public bodies look to their experiences during the Covid-19 crisis for inspiration.

- **Administrative capacity**

Public bodies were in a challenging position at the start of the Covid-19 crisis, in terms of both manpower and resources. The public administration of the public bodies did not have sufficient staff, and what staff was there did not always have the right expertise. The Covid-19 crisis made enormous demands of the public administration, causing many regular activities and existing challenges to fall behind schedule. Particularly since the implementation of the Covid-19 act, administrators and civil servants have spent a great deal of time on keeping in contact with the State government. The financial starting point for the public bodies was also far from ideal. However, the public bodies benefitted from the same compensation schemes for public finance as the municipalities. The public bodies are also satisfied with the implementation of this procedure.

The Council has had difficulty in determining the consequences of the Covid-19 crisis for the challenges the public bodies will be faced with in the coming years. It is clear that existing challenges have fallen behind schedule, causing backlog. In terms of economy, the impact of the Covid-19 crisis has been big; the extent to which the economy of the Caribbean Netherlands will recover is

yet to be determined. As a result, the structural consequences for the financial resources of the public bodies are also uncertain. It is the Council's impression that the decisive and communicative local leadership of the governors and Government Commissioner contributed to the active combatting of the Covid-19 pandemic.

Due to the uncertainty of (additional) consequences of the Covid-19 pandemic and the measures used to combat it, the Council recommends that the Cabinet and Parliament ensure adequate monitoring of the consequences of the Covid-19 crisis in economic and social terms as well as on people's mental resilience. The consequences for the finances of public bodies must also be properly monitored. The finances and the administrative organisation of the public bodies must be reinforced in such a way as to be capable of absorbing the consequences of the Covid-19 crisis, as well as to address more structural issues.

