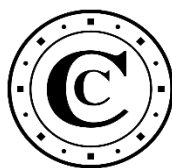


Cour des comptes



Chambres régionales  
& territoriales des comptes

# THE RECONSTRUCTION OF ST. MARTIN AND ST. BARTHELEMY AFTER THE PASSAGE OF HURRICANE IRMA

Thematic public report

July 2021

## Summary

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## Procedures and methods

In accordance with Article L. 143-6 of the Code of Financial Jurisdictions, the Court of Accounts publishes an annual public report and thematic public reports each year.

These works and their annexes are carried out by one of the six chambers of the Court or by a formation involving several chambers and/or regional or territorial Chambers of Accounts.

Three fundamental principles govern the organisation and activity of the Court and the regional and territorial Chambers of Accounts, thus both the execution of their controls and investigations and the preparation of public reports: independence, contradiction and collegiality.

**The institutional independence** of the financial courts and the statutory independence of their members ensure that checks carried out and conclusions drawn are free of discretion.

**The contradiction** implies that all findings and assessments made during a control or investigation, as well as all subsequent observations and recommendations, are systematically submitted to the heads of the administrations or bodies concerned; they may be made final only after taking into account the replies received and, when appropriate, after hearing the officials concerned.

Except for reports produced at the request of Parliament or the Government, the publication of a report is necessarily preceded by the communication of the draft text, which the Court intends to publish, to the ministers and officials of the bodies concerned, as well as to other legal or natural persons directly concerned. In the published report, their replies are set out in the appendix of the text of the Court.

**Collegiality** comes as a conclusion of the main stages of the control and publication procedures. Any control or investigation shall be entrusted to one or more rapporteurs. The investigation report, as well as subsequent drafts of observations and recommendations, provisional and final, shall be considered and deliberated in a collegial manner by a panel of at least three magistrates. One of the magistrates acts as a counter-rapporteur and ensures the quality of the checks.

The present investigation was conducted by an inter—jurisdictional panel involving the Fifth Chamber of the Court of Accounts and the Territorial Chambers of the Accounts of Saint Martin and Saint-Barthélemy. The Fourth Chamber of the Court, under its competency in civil security matters, was also associated.

Investigation has involved many actors at regional, local, but also national level. At the territorial level, the main actors involved are the communities of Saint-Martin and Saint-Barthélemy, as well as their different bodies, the prefecture of the Guadeloupe region, the prefecture of Saint-Martin and Saint-Barthélemy and the attached state services, the three social donors present in the territory (SIG, SIKOA and SEMSAMAR), the company operating the airport of Grand'Case and the hospital centre of Saint-Martin. The financial courts also worked close to the public prosecutor of Basse-Terre. At the national level, the former interministerial delegate for the reconstruction of Saint Martin and Saint-Barthélemy, the interministerial delegate to major risks overseas, the Overseas Directorate-General, the Directorate-General for Public Finance, the French Development Agency and the Caisse des dépôts et consignations were requested.

The field survey carried out in the autumn of 2020 was supplemented with exchanges with magistrates of the *Algemene Rekenkamer*, the Dutch Higher Supervisory Institution, which investigated the situation in Sint Maarten and whose findings supported the observations of the present report.

The draft report submitted for adoption to the Chamber of Council was prepared and then deliberated on 9<sup>th</sup> of April 2021 by the inter-jurisdictional formation, chaired by Mr Terrien, President of Chamber and composed of Mr Colcombet, Senior Counsellor and Head of territorial Chambers of Account, Mr Hayez, Mr Berthomier, Mr Saudubray, Senior Counsellors, Mrs Toraille, Senior Counsellor, as rapporteurs, Mr Bouvier, Senior Counsellor in Extraordinary Service, Mr Beauviche, Junior Counsellor, Mrs Venera, Auditor as counter-rapporteur, Mr Cabourdin, Senior Counsellor.

It was examined and approved on the 4<sup>th</sup> of May 2021 by the public reports and program Committee of the Court of Accounts, composed of Mr Moscovici, First President, Mrs Camby, rapporteur-general of the Committee, Mr Morin, Mr Andréani and Mr Terrien, Mrs Podeur, Mr Charpy and Mr Gautier, Presiding Officers, Mrs Hirsch, the Prosecutor General, heard in her opinions.

The Court of Accounts' public reports are available online on the website of the Court and the Regional and Territorial Chambers of Accounts: [www.ccomptes.fr](http://www.ccomptes.fr).

They are distributed by La Documentation Française.

## Deliberate

The Court of Accounts, deliberating in the Council Chamber in ordinary formation, adopted the report entitled *The reconstruction of St. Martin and St. Barthélemy after the passage of Hurricane Irma*.

It adopted its positions on the basis of the draft communicated in advance to the Prime Minister, the bodies and local authorities concerned and the replies sent back to the Court. Copies were sent, for information, to the Minister of Economy, Finance and Recovery, to the Minister for Territorial Cohesion and Relations with Local Authorities and to the Overseas Minister.

The responses are published at the end of the report. They bear the sole responsibility of their authors.

Participated in the deliberations: Mr Morin, Dean of the Presidents of the Chambers, replacing the First President, Mr Andréani, Mr Terrien, Mrs Podeur, Mr Charpy, Mr Gautier, Mrs Camby, Presidents of the Chambers, Mrs Moati, maintained President of the Chamber, Mrs Darragon, Mr Metzger, Mrs carrère-Gée, Mr Glimet Mr Berthomier, Mr Bouzanne des Mazery, Mr Appia, Mr Homé, Mrs Toraille, Mrs Mazières, Mr Seiller, Mrs Mercereau, Mr Mairal, Mr Duguépéroux, Mr Champomier, Mrs Lignot-Leloup, Senior Counsellors, Mr Richier, Mr Autran, Senior Counsellors in Extraordinary Service, Mr Diringer, Mr Serre, presidents of regional Chambers of Account.

The following were heard:

- In his presentation, Mr Terrien, Chairman of the interjurisdictional panel responsible for the work on which the views of the Court are based and the preparation of the report;
- in her report, Mrs Camby, rapporteur-general, rapporteur of the draft before the Chamber of Council, assisted by Mr Bouvier, Senior Counsellor in Extraordinary Service, Mr Beauviche, Junior Counsellor, Ms Venera, Auditor, Rapporteurs before the inter-jurisdictional formation responsible for preparing it, and Mr Cabourdin, Senior Counsellor, counter-rapporteur before the same formation.
- in her oral observations, without taking part in the deliberations, Ms. Hirsch, Attorney General, accompanied by Mr. Luprich, General Deputy.

Mr. Thornary, General Secretary, served as the secretariat of the Chamber of Council.

Done at the Court, 29 June 2021.



## Summary

In 2017, three hurricanes of exceptional violence hit the islands of Saint-Martin and Saint-Barthélemy, 250 kilometres north-west of Guadeloupe. The most devastating of them, Irma, caused considerable damage to both territories.

Following emergency management, a phase of gradual re-establishment of networks, organisation of access to care and re-opening of schools has taken place for the benefit of the 50,000 residents of both islands. It was at the end of these first two stages that the reconstruction itself truly began. The French President of the Republic had announced during his visit to the country on 28 October 2017 that it ought to be sustainable and exemplary. In March 2018, the State's financial assistance was estimated at more than EUR500 million at the inter-ministerial meeting, two-thirds of which related to the reconstruction phase<sup>1</sup>. Part of this amount has yet to contribute to the financing of the State's participation in the convergence and transformation contract signed with the community of Saint-Martin in 2020, supporting part of its multi-annual investment plan. If the Court recommends that the Overseas Ministry carries out a precise and regular follow-up of the public funds mobilised for the reconstruction of Saint Martin, an exact measure of the State's financial support for reconstruction should be presented only after the complete implementation of this plan.

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<sup>1</sup> In addition to the financing of the State resources' mobilisation in the emergency phase estimated at EUR163 million, the State's financial assistance included both economic support to businesses, individuals and two local authorities to the total sum of EUR140 million, as well as the mobilisation of EUR46 million from the solidarity fund of the European Union, the financing of State property projects for the relocation of its services for an amount of EUR18.2 million, the possibility for the Saint-Martin community to subscribe for a EUR60 million subsidized loan, and the exceptional participation of the State and its operators to the investment of the Saint-Martin community up to EUR66.4 million.

### **Different choices in the two islands, as regards to the methods of reconstruction and the degree of State intervention**

The difference in the methods of reconstruction and the degree of State intervention is first explained by the characteristics of the two islands: Although both enjoyed broad autonomy, in particular with regards to taxation, Saint-Martin had not yet completed the establishment and organisation of institutions resulting from the legislative reform of 2007. The expertise and management capacities of the young community remain inadequate. Moreover, its level of economic development remains lower than that of Saint-Barthélemy, thus it does not offer it the same leverage.

In addition, the damage was significantly greater in St. Martin than on the neighbouring island. In Saint-Barthélemy, the lower share of precarious habitat and stricter compliance with construction rules in risk areas may account for the slightest damage.

In this context, the community of Saint-Barthélemy supervised and assumed responsibility for its reconstruction, with the State acting only on an ad hoc basis to ensure financial continuity.

On the other hand, the community of Saint-Martin has received significant support from the State and its operators, both in terms of funding and strengthening of its human resources in management and engineering. This collaboration was formalised in two agreements concluded on 6 and 21 November 2017. Given the fragility of its administrative and technical organisation and the complexity of the operations to be carried out, it appears *a posteriori* that a direct administration by the State of the reconstruction could have been justified. However, the latter did not want a recently created community to be divested of its competences, especially since it had expressed its willingness to discard this possibility.

### **A near-complete reconstruction for Saint-Barthélemy**

The community of Saint-Barthélemy, having learned from previous climatic events and with technical services available and suited to these circumstances, was able, without substantial external public support, to quickly restore the continuity of public services essential to everyday life and population displacement. The reconstruction of its destroyed heritage is now well advanced. It is accompanied by a major effort to adapt buildings and equipment in order to learn from the experience of Irma.

### **An unfinished reconstruction facing major challenges in Saint-Martin**

Despite the adoption of an ambitious EUR230 million development plan agreed by the community in 2018, the restoration of buildings

destroyed in Saint-Martin is still very partial: less than half of the building stock and equipment is being rebuilt, with the exception of schools and high schools that are now almost all upgraded. The restructuring and strengthening of services are under way, but far from being completed. The weak management base of the community led it to be able to obtain only EUR25 million out of the EUR46 million allocated by the European Union Solidarity Fund (EUSF) and to rely on a failed system of public orders. It is true that the partition of the island with Sint Maarten, its Dutch side, has made the mission of the French local authorities more complex, while closer cooperation could foster a common development.

Thus, the completion of the reconstruction of Saint-Martin requires that several challenges, that rely above all upon the community, the State and operators, are met. It is first of prime importance that the development plan materialised, by strengthening the local capacity of contracting bodies and public order, by implementing the plan for prevention against natural hazards and by ensuring that one complies with construction rules the same way it is done at Saint-Martin, in order to reduce the risk of repetition of the impacts of this type of disaster. Secondly, the necessary funding needs to be sustained, in particular by mobilising the community's tax resources to the best purpose. Finally, the State technical support will be maintained and will continue to be decisive for management and expertise, but it will have to be regularly evaluated and adapted to support the community of Saint-Martin until it is able to exercise its powers on its own. This necessary strengthening of collaboration concerns in particular taxation and modernisation of tax collection.

The method of reconstruction chosen for Saint-Martin, balancing community support and exercise of its own responsibility, has not yet made it possible, almost four years after the hurricane, to complete an exemplary and sustainable reconstruction. The experience gained by the State and the communities affected by Irma is worth, in the future, sharing with other ultramarine communities that are exposed to the same risks.

## Summary of recommendations

1. Complete the updating of urban planning and intensify the implementation of the administrative police of urban planning (*community of Saint-Martin*).
2. Extend and adapt the legislation on property in state of manifest abandonment as stated in Articles L. 2243-1 to L. 2243-4 of the CGCT in Saint-Martin (*Ministry of Overseas Territories, Ministry of Territorial Cohesion and Relations with Local Authorities*).
3. Follow up on public funds mobilised for the reconstruction of Saint Martin (*Ministry of Overseas Territories*).
4. Formalise and implement a public order policy with the necessary tools (*community of Saint-Martin*).
5. Adopt a medium-term financial trajectory compatible with the financing of the development and reconstruction plan (*Saint-Martin community*).
6. Carry out an impact study of the future tax reform (*community of Saint-Martin*).
7. Establish an effective collaboration between DRFiP and the community of Saint-Martin (*Ministry of Economy, Finance and Recovery and Community of Saint-Martin*).
8. Take stock at the end of 2021 of the contributions and technical support provided by the State and the AFD to the project of services for the community (*Ministry of Overseas Territories, AFD, Saint-Martin community*).

# Introduction

On August 30, 2017, off Cape Verde, the tropical storm Irma was forming, and got bigger on August 31 to finally become a hurricane of Category 2 and then 3 on the Saffir-Simpson scale. With gusts of wind exceeding 300 km/h leading to heavy submersions on the coasts, the hurricane Irma hit the French Antilles and devastated the so-called Northern Islands during the night of September 5 to 6, 2017.

**Map no. 1 : geographical location**



*Source: Court of Accounts*

After the emergency management phase, a “back to normal” phase for the 50,000 residents began, with three imperatives: re-establishing networks, organising access to care and reopening schools. To this end, in order to coordinate the action of the ministries, a special inter-ministerial delegation for the reconstruction of the islands of St. Barthélemy and St. Martin was set up on 14 September 2017.

Despite the violent and exceptional nature of this hurricane, its impact on equipment and materials has been contrasted. The analysis carried out by the Directorate-General for Civil Security and Crisis Management on behalf of the Overseas Territories Ministry in July 2018 found profound disparities between the two islands<sup>2</sup>. With nearly 56 % of its infrastructure moderately to severely damaged or even destroyed, Saint Martin had a damage rate three times higher than Saint-Barthélemy, where only 18 % of the infrastructure was damaged. Another notable fact is that in St. Martin almost 70 per cent of the damage involved buildings that had been built in a risk zone.

With a different status and economic weight, the two local communities also did not have the same capacity for reconstruction.

Saint-Barthélemy rapidly took charge of its reconstruction on its own, with limited support from the State and, by the end of 2018, was able to welcome tourists again, an important resource of its economy.

For its part, the community of Saint-Martin was engaged before the hurricane in a process of restoring a severely degraded financial situation. It set up reconstruction within the framework of an ambitious development project. This project required a strengthening of its internal management capacity, be it only for absorbing the large financial assistance announced by the State at the end of the inter-ministerial committee of 12 March 2018, estimated at around EUR500 million, one third of which was dedicated to emergency measures and two-thirds to support the economy and reconstruction.

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<sup>2</sup> However, these results must be nuanced, in the absence of a possible distinction by satellite images between undamaged and slightly damaged buildings (both categories were merged).

As pointed out by the French Development Agency (AFD) for Saint-Martin, "in the face of a crisis of this magnitude, local institutions have had great difficulties in reacting effectively. In fact, Irma has highlighted and exacerbated structural weaknesses, both financially and organizationally speaking, already identified by the local authority itself, as well as by the State departments and the AFD"<sup>3</sup>. This fragility may explain that, more than three years after the hurricane, the reconstruction of Saint-Martin has only started while it is almost completed in Saint-Barthélemy. While letting the community, and at its request, organising reconstruction and carrying out its own development project, the State has nevertheless committed itself to strong support. An ambitious partnership was created, based on a contractual approach and aimed at building an exemplary island for sustainable development, while drawing lessons from the past and in particular from Irma.

The two northern islands suffered the same cataclysm, but each was subject to different methods and modalities of reconstruction, taking into account their institutional and developmental characteristics. While the reconstruction is now almost completed in Saint-Barthélemy, Saint-Martin is still facing important challenges, even without mentioning the specificity of the island, divided between France and the Netherlands.

While many reports have been released on crisis management, the Court of Accounts has initiated an investigation into the reconstruction of these two French islands. It was particularly interested in the *modus operandi* chosen for the reconstruction of Saint-Martin, in that case a complex system based on strong support from the State and AFD, as well as an active engagement of the community. Before it could be implemented, this *modus operandi* required that several preliminary steps had to be taken, namely organizational audits, the mobilisation of technical experts as well as the gradual strengthening of the decentralised services of the State and the administrative capacity of the community. The intervention of the financial courts, within a sufficient time after the start of the reconstruction, allowed them to assess the first results and the relevance of the chosen method.

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<sup>3</sup> Agence française de développement, *Note to the Ministry of Overseas Territories on the system of accompaniment of the community of Saint-Martin*, April 2019.





# **Chapter I**

## **Different choices**

### **regarding the intervention modalities of**

### **the State for the two islands of Saint-**

### **Martin and Saint-Barthélemy**

#### **I - The characteristics of the two islands**

##### **A - Two special bodies within the meaning of Article 74 of the Constitution**

###### **1 - Communities with a wide range of competences**

In the light of the constitutional revision of March 2003, Act No. 2007-223 of 21 February 2007 and Act No. 2007-224 of 21 February 2007 laying down statutory and institutional provisions relating to the overseas territories established, instead of the communes of Saint-Barthélemy and Saint-Martin, two new overseas communities governed by Article 74 of the Constitution. Since 2008, these communities have exercised the powers previously vested in the commune, department and region of Guadeloupe, as well as those transferred to them by the State, including in the field of law.

Thus, they have fiscal autonomy and important competences vis-à-vis communities governed by common law, particularly in the areas of urban planning and economic development. In addition to this are road transport, maritime services of territorial interest, roads, the environment, access to work for foreigners, energy and tourism within the field of competency of these two communities.

In other domains where laws and regulations apply automatically, they may be adapted to the particular organisation of these overseas communities.

Moreover, the creation of the two communities was accompanied by a strengthening of the presence of the State with the institution of a deputy Prefect. The Prefect of Guadeloupe remains the representative of the State in Saint-Martin and Saint-Barthélemy, but the deputy Prefect ensures the

effective direction of the local government services. The prefecture is located in Saint-Martin and a counter is located in Saint-Barthélemy.

Regarding the relationship with the European Union, on the 1<sup>st</sup> of January 2012 Saint-Barthélemy acceded to the status of Overseas Country and Territory (OCT). If the OCTs have customs competence and are associated with the European Union, they are not subject to the application of Community law. This status helps facilitate trade with the United States<sup>4</sup>.

On the other hand, the community of Saint-Martin made a different choice, becoming an outermost region (OR)<sup>5</sup>. It thus remains eligible for Community funds.

In accordance with this method of fiscal autonomy, the tax revenue of the taxpayers of Saint-Barthélemy and Saint-Martin is a full and complete revenue for each community. No national tax is therefore levied. Communities also have the power to determine their own fiscal policy. In Saint-Martin, however, the community came to an agreement with the State to manage the tax recovery.

## **2 - An assimilation of the new institutional construction not fully completed for Saint-Martin**

The hurricane hit in 2017, when the community had not yet overcome the challenges associated with its institutional transformation of the years 2007-2008. Its urban planning was committed but not yet completed, its stock of equipment and building was aging and not suitable to resist to the violence of a climatic cataclysm of such a magnitude. For example, the multimedia library, which had just been completed, was destroyed by Irma.

The community's very limited capacity for action was still unsuitable to deal with the multiple and complex challenges of its very broad field of competence. As of December 31, 2015, the community had a proportion of managers (category A) 25% lower than the national average (6.7 % against 9.3 %). The direct and indirect consequences of the under-administration that had prevailed up to the institutional change were far from being overcome.

In order to help Saint-Martin continue to adapt and strengthen its services, the State had formally placed itself in the position of a partner and support of the community, within a contractual framework. AFD was also mobilised. However, the services of the State, in particular those of the Directorate for the Environment, Planning and Housing (DEAL in French), had not yet the sufficient resources for their full exercise. The information system, allowing tax recovery carried out by the Department of Public Finance

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4 The status of OCT is based on an association scheme. The territories concerned are considered foreign territories where only part of Community law applies.

5 The OR regime is the one in force in the overseas departments and regions. It allows for the applicability in principle of the whole Community law, original and derived. Some adaptations may nevertheless be justified by the "economic and social development of these regions". The ORs territory is an integral part of the European Union.

(DDFiP) of Guadeloupe, was not fully adapted to the specificities of local tax provisions.

### **3 - Sint Maarten and Saint Martin, the need for concerted action**

The dual nationality of the island of Saint Martin, without a proper border between the French and Dutch parts, is at the heart of its economic and social balance.

The Dutch territory of the West Indies having the status of “country” Sint Maarten enjoys a high degree of internal autonomy. The Constitution of Sint Maarten was adopted on 21 July 2010. The Territory has a democratically elected Parliament and its own Government responsible for drafting legislation on internal affairs. Sint Maarten has his own Ministry of Justice and a common central bank with Curaçao, the monetary unit being the Caribbean Florin. In addition, like Saint Bartholélémey, Sint Maarten adopted the statute of OCT.

The Executive of the Kingdom of the Netherlands is represented by a Governor. At his or her side, there is a representative of the Netherlands where all Dutch Ministries are represented, the exception being Defence and Foreign affairs, areas which remain within the Kingdom’s competence. The Netherlands cooperates with the Sint Maarten authorities for Justice, fight against corruption and international crime, as well as to ensure public order.

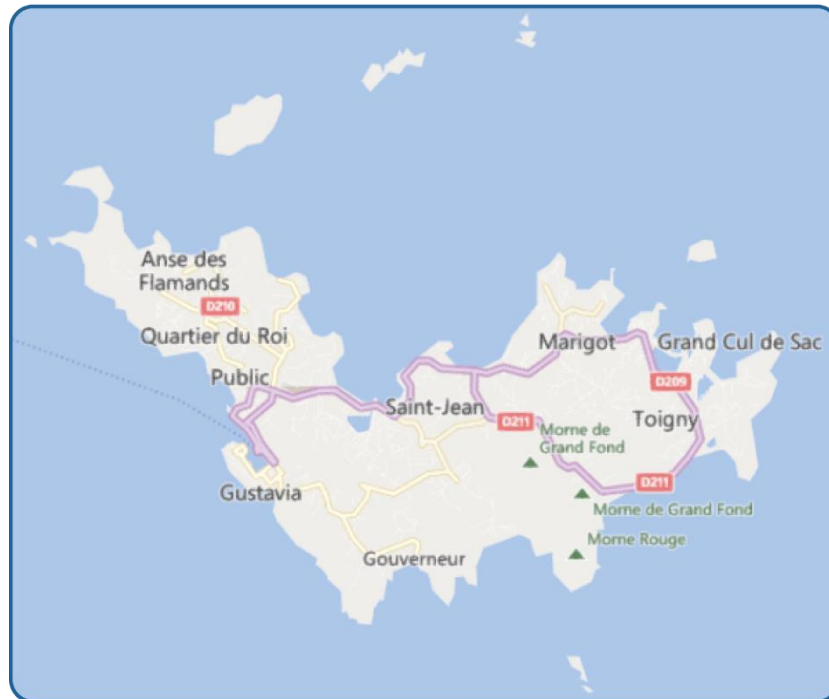
The coexistence of two communities with different nationalities and European statutes on the same island territory, but with the free movement of the inhabitants, requires a much closer cooperation. The differences of status and the instability of the governments of Sint Maarten (ten governments in ten years) made this cooperation difficult. Today, this cooperation is not commensurate with these challenges.

## **B - Different levels of economic development on both islands**

### **1 - The economic situation of Saint-Barthélémey**

With an area of 21 km<sup>2</sup>, Saint-Barthélémey is a dry island, where water is produced by desalination. It has a tropical maritime climate.

**Map no. 2 : the island of Saint-Barthélemy**



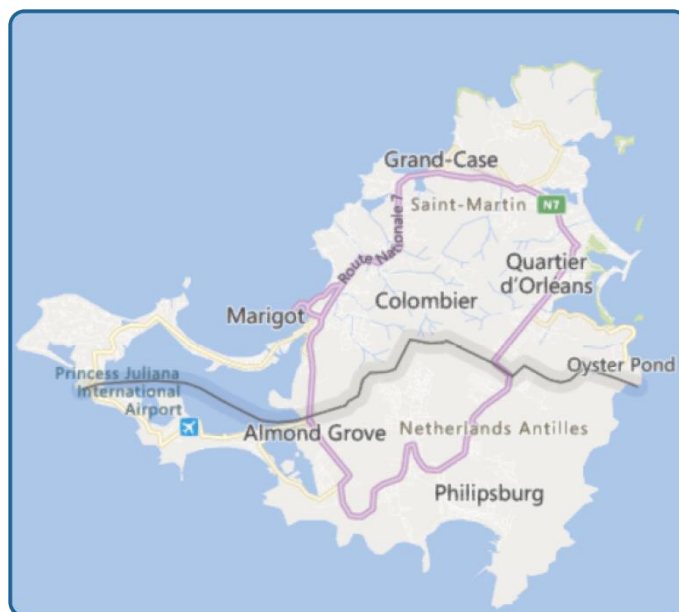
*Source: Court of Accounts*

In 2016, the date of the last census, Saint-Barthélemy had a population of 9,793 inhabitants, a stable population since 2013. It is a population with a large majority of European origin. The foreign community (also mainly European) accounts for only 12 % of the population. Until the middle of the XX<sup>th</sup> century, the island's economy was based on agriculture, fishing and free port activity. Since the acquisition in 1957 of a property by David Rockefeller, the business has resolutely turned into high-end tourism (villas rentals, hotels, pleasure-boating, cruises) mainly for a North American clientele (70 %). The economic sector is oriented towards services related to the construction of hotel facilities while remaining strongly supported by public order.

Saint-Barthélemy is prosperous, with a gross domestic product (GDP) estimated at EUR 35,700 per capita in 2014 and a low unemployment rate (4.3 % in 2015). However, this favourable situation relies on the island of St. Martin and, in particular, the port and airport infrastructure of Sin Maarten. Relationships between the two islands are numerous in particular in terms of tourist links and freight traffic.

## 2 - The economic situation of Saint Martin

Map no. 3 : the island of Saint-Martin



Source: Court of Accounts

In 2016, Saint-Martin had 35,746 inhabitants, that is to say 695 inhabitants/km<sup>2</sup>. During the 1980s, the territory went through an unprecedented population growth in France, with Saint-Martin seeing its population multiplied by 3.5 in less than ten years. The foreign community was estimated at 35 % of the population, almost half of which are Haitian; The illegal population was estimated at 8,000.

The economy of Saint-Martin has been resolutely oriented towards tourism, thanks in particular to the incentives for tax exemption as enshrined in the “Pons” Act of 1986. This development model has led to excessive investments in some specific sectors, destabilising the economic sector as a whole, without correcting the developmental weaknesses of the territory. This sector mainly consists of services, trade and construction companies. Agriculture, salt marsh exploitation and fishing are now marginal activities.

Saint Martin is a territory suffering from multiple imbalances, with a young, low-skilled population marked by high precariousness and high unemployment and a large informal economy. Activities are, by and large, related to meeting the needs of locals and tourists.

On the other hand, as in other French ultramarine territories, Saint-Martin is in competition with its Dutch neighbour, where regulation is more liberal, taxation and social policies less favourable and operating costs lower. In a context of free movement, these differences put Saint Martin in a difficult situation<sup>6</sup>. GDP per capita, which is lower than that of Saint Barthélemy and the Dutch part, is estimated at EUR 16,572 per inhabitant (2014 data). The unemployment rate stood at 33.9 % in 2017.

## II - Different levels of state intervention on the two islands

In addition to these distinctions between the two islands in terms of institutional and administrative organisation and level of economic development, the importance of destruction and its impact have also been different.

In general, while the violence of the hurricane was similar across the three territories of the Northern Islands, the impact of the hurricane varied according to the types of buildings, their design, the quality of the structures and their location.

**Table No. 1 : identification of the state of the buildings of Saint-Barthélemy by satellite (2017)**

Destroyed buildings	Severely damaged buildings	Moderately damaged buildings	Little or no damaged buildings
206 buildings (3 % of the stock)	157 buildings (2 % of the stock)	832 buildings (11 % of the stock)	6,389 buildings (84 % of the stock)

*Source: Saint Martin's DEAL based on data from the Copernicus programme*

**Table No. 2 : identification of the state of the buildings of Saint-Martin by satellite (2017)**

Destroyed buildings	Severely damaged buildings	Moderately damaged buildings	Little or no damaged buildings
2,525 buildings (20 % of the park)	1,350 buildings (11 % of the park)	3,000 buildings (23 % of the park)	6,824 buildings (47 % of the park)

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<sup>6</sup> Sint Maarten has the only international airport and deep-water port to accommodate cruise ships (1.67 million cruise passengers in 2016).

Saint Martin experienced a much larger amount of destruction. The share of undamaged or low-damaged property is 47 %, while in Saint-Barthélemy, it is of 84 %. Destroyed buildings account for 3 % of the building stock in Saint-Barthélemy compared to 20 % in Saint-Martin. The lower proportion of precarious habitat and stricter compliance with the rules limiting construction in areas at risk contribute to the slightest damage in Saint-Barthélemy. One can notice that nearly 70 % of the damage to the island of Saint-Martin has affected buildings located in a risky area, and the community of Sint Maarten reports a level of destruction as high as its French neighbour.

Thus, Saint Martin suffered the most from extensive destruction and damage.

These differences have led to a different solicitation of the State by these communities for the reconstruction of their territory. In both cases, the method used differs from that used in the Dutch part by the Dutch State, which preferred acting through the World Bank.

In order to carry out its work and coordinate that of the ministries, on 14 September 2017 the French Government set up an interministerial delegation for the reconstruction of the North Islands and an inter-ministerial committee for the reconstruction of Saint Martin was set up in November 2017. Still formally in force, although it has not met since September 2018, it is chaired by the Prime Minister, assisted by the ministers and board of directors involved.

### **A - A fully controlled reconstruction by the community of Saint-Barthélemy**

The reconstruction of public facilities in Saint-Barthélemy was almost entirely overseen, financed and supported by the community, with the State acting occasionally to ensure financial continuity.

### **B - A reconstruction dependent on the financing and strong State support in Saint-Martin**

From the outbreak of the crisis, the Government wanted to learn fully from Irma and accompany exemplary reconstruction, taking into account all dimensions of sustainable development and the most successful environmental standards. Crisis management highlighted straight away the long-standing fragilities of the administrative and technical organisation of the community. To compensate for these, the State had to put in place significant administrative and technical support, coming from metropolitan France and neighbouring departments, which was not compatible with the statutory autonomy stated in article 74 of the Constitution.

The hypothesis of direct administration by the State for the reconstruction based on the provisions of Article L.O. 6321-35 of the General Code of Local Authorities (CGCT) could have been considered. Pursuant to these laws, the State representative has exceptional powers in

the event of malfunctioning of the territorial institutions. The Government has not opted for this possibility. In view of the complexity of the reconstruction process in Saint-Martin, of a unfinished establishment of the new institutions and of the weaknesses of its administration, the decision may be surprising. But the State, although organising significant support, did not want the community, ten years after its creation and while an electoral renewal had taken place shortly before the hurricane, to be divested, even temporarily, of its powers. The community had not considered it, showing for the beginning the willingness to take control of its future.

The form of State support to the community emerged this way and was formalised in the two agreements of 6 and 21 November 2017.

### **C - A reconstruction financed by the Dutch State through the World Bank in Sint Maarten**

For the reconstruction of the Dutch part of the island, the Dutch Government decided to use an investment fund handled by the World Bank. This trust fund is endowed with EUR470 million out of the EUR550 million of public funding dedicated to the reconstruction of the island. Its operation required the approval of the projects by both the Netherlands and the community of Sint Maarten.

This reconstruction modality turned out to be difficult to implement. In its initial findings<sup>7</sup>, the *Algemene Rekenkamer*, the Dutch Supreme Audit Institution, noticed that these procedures took a long time and can potentially lead to delays. As a result, repairment works of electricity networks and water storage systems remained on hold for a long time, as long as the body responsible for it was not using the tendering procedure as required by the World Bank.

In particular, the SAI noticed that the main obstacle to rapid reconstruction was the lack of labour force and expertise on the island. It pinpointed the dilemma between the need to act with caution with regard to the law, and the need for a rapid reconstruction of the infrastructures. Caution prevailed, and a large share of the funds was spent on the planning and financing of existing plans. This situation has temporarily deprived the population of Sint Maarten of tangible results regarding reconstruction projects financed by the investment fund. By spring 2019, though, more than half of the Dutch contribution had already been paid.

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<sup>7</sup> *Algemene Rekenkamer, Focus on the Dutch contribution to the reconstruction of Sint Maarten*, 2018.



## **CONCLUSION**

*The hurricane Irma, of exceptional violence, hit two French overseas communities in September 2017, whose special status acquired in 2007 granted them with great autonomy, particularly in terms of taxation. In terms of economic development, the situation in Saint-Barthélemy is much more favourable than that of Saint Martin.*

*With regards to these different contexts, plus heavier damage in Saint-Martin, the State's support to both communities, as well as the methods chosen for the governance of their reconstruction, have been different. The moderate level of State support to a reconstruction fully controlled by the community in Saint-Barthélemy contrasts with the extensive and protracted support it is giving to Saint-Martin for reconstruction based on close collaboration between the State and the community. To this end, the Government did not wish to temporarily put Saint-Martin under the direct administration of the State or to divest it of its powers, even though the complexity of the reconstruction and the under-administration of the community could have allowed it. The arrangements chosen by the Netherlands for the territory of Sint Maarten, very different from those adopted by France, do not, to this date, represent a convincing alternative.*

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## **Chapter II**

### **Contrasted rhythms of reconstruction and results**

While both communities benefited from the support and cooperation of the State, the technical and financial support provided to Saint Martin was significantly greater, taking into account the resources of its administration, its economic situation and the extent of the damage suffered.

These differences in the situation between the two communities also explain that they are now experiencing contrasting situations concerning their reconstruction: while it is almost completed in Saint-Barthélemy, it is far from being completed in Saint-Martin.

#### **I - Cooperation between the State and the two local authorities**

In order to carry out the reconstruction, the State found itself in a position of support very different from what it usually encounters for such disasters. It had to take a three-fold action to ensure the financial and budgetary viability of the two communities, relocate its services to meet the needs of the population and provide Saint-Martin with a demanding and innovative support, so that the community could fully take part to the reconstruction.

## **A - Exceptional and plural financial support**

The State has endeavoured to ensure the financial continuity of both communities by adapting its interventions to their particular institutional situations and needs. While for Saint-Barthélemy this support was only for one financial year, it was set up in a multiannual perspective for Saint-Martin. To this institutional solidarity were added those of civil society, several local and regional authorities and the European Union.

### **1 - Saint-Barthélemy benefited in 2018 from an exceptional relief of burdens by the State**

The community was enjoying a favourable financial situation at the time of the hurricane. The State, taking into account the consequences of the temporary cessation of economic activity on the community's resources, including the reduction in tax revenues, cancelled the contribution that the community should have made as part of its overall negative compensation allocation for that exercise. The community of Saint-Barthélemy, a net contributor to the State budget, benefited from a reduction in charges of EUR2.88 million in 2017. This measure was accompanied by specific business reliefs, eased access to the part-time work activity scheme and a moratorium on employers' social security contributions.

### **2 - The State compensated for Saint Martin's loss of revenue**

In Saint-Martin, the State's financial support was aimed at offsetting the loss of tax revenues due to the fall in economic activity.

The balance of the endowments for 2017 (EUR10 million) and the compensation for 2017 of the property tax relief (EUR12.1 million) were very quickly paid. An exceptional operating allocation has been allocated. Emblematic of the national solidarity effort, this allocation was made up of tax drains on other compensatory allocations.

In accordance with the protocol signed between the State and the community as early as October 2017, this exceptional allocation was determined on the basis of a joint analysis of the community's financial situation, its own resources and the trajectory of economic recovery. In practice, the amount of the endowment was paid in reference to the amount of the community's tax revenues. For example, the State paid an endowment of EUR25 million in 2018. As at 31 December 2018, the level of total revenue amounted to EUR110 million (EUR85 million in tax revenues collected, plus EUR25 million in endowment), which represents an increase of 28.1 %<sup>8</sup> compared to 2017.

In 2019, the application of the exceptional clauses for payment resulted in diverging interpretation between the State and the community.

The readability of the community's financial situation has indeed got more complex with the unilateral repayment of EUR17 million by the community of its Supplementary Welfare Allowance (RSA in French) debt to the Benefits Office (CAF<sup>9</sup> in French) and the budgeting of its entire investment programme. This payment deteriorated the treasury situation of the community without being part of a protocol for the resolution of cross-debts between the community and the CAF, which owed EUR17 million to the community. This situation led to the determination of new payment dispositions.

The protocol has therefore been amended and the community committed itself to increasing its operating revenues, controlling the evolution of its operating costs, improving the rate of implementation of its multiannual investment programme (MIP) and adopting a charter for the prevention of corruption. In return, the State provided an endowment of EUR16.1 million to finance investment expenditure incurred in 2019 under the PPI.

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<sup>8</sup> In 2016, the amount of tax revenue was EUR97.46 million, the highest amount since the creation of the community. This amount was EUR73.4 million in 2017.

<sup>9</sup> The community has a significant and long-standing debt vis-à-vis CAF and the CAF also has a smaller debt vis-à-vis the community related to the resource levy imposed by the community on the RSA.

**Table No. 3 : exceptional payments from the State to the Community of Saint-Martin**

	2017	2018	2019
Compensation for the reduction of property taxes	EUR12.1 MILLION		
Exceptional operating allocation		EUR25.0 MILLION	
Exceptional investment allocation			EUR16.1 MILLION
<b>Total</b>	<b>EUR53.2 MILLION</b>		

*Source: DGOM – Community of Saint-Martin*

These payments (EUR53.2 million between 2017 and 2019) allowed the community to maintain the cash flow needed to meet its expenses, without compromising its operating financial balances<sup>10</sup>.

The State also supported the reconstruction of social housing by contributing EUR6 million<sup>11</sup> to social donors.

### **3 - Both communities have benefited from national solidarity**

Beyond budgetary efforts, national solidarity has also resulted in multiple donations from local authorities and the private sector (companies, associations, individuals). Saint-Barthélemy and Saint-Martin received EUR0.66 million and EUR1.62 million respectively between 2017 and 2018.<sup>12</sup>

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<sup>10</sup> Taking as a reference the level recorded in 2016 (EUR97.5 million), the tax revenue loss between 2017 and 2020 is estimated at EUR47.2 million.

<sup>11</sup> During the contradiction phase, the local authority clarified that the development company SEMSAMAR, of which it is the main shareholder, did not pay dividends to its shareholders in return for the aid obtained, which would amount to a loss of profits, estimated, according to its figures, at EUR 3 million.

<sup>12</sup> In addition, according to the Saint-Martin community, donations from the private sector (mainly individuals) that passed through the Fondation de France should be added: By the end of August 2020, EUR10.31 million had been earmarked for projects in Saint-Martin and EUR0.43 million for projects in Saint-Barthélemy, for a total of EUR10.74 million.

#### **4 - The mobilisation of the European Union Solidarity Fund has been limited**

European solidarity expressed itself through the mobilisation of the European Union Solidarity Fund (EUSF) and the adjustment of the European Structural and Investment Funds for the territory of St. Martin<sup>13</sup>.

In accordance with the EUSF rules, on 11 July 2018 the European Commission granted EUR46 million in financial assistance for the reconstruction of Saint Martin, provided that the use of the fund took place within 24 months of the payment of the contribution to France. These funds included a priority right granted to the community by the State, applicable until December 31, 2018. This right has been postponed twice, to 31 March and 30 September 2019, in order to take account of delays in credit consumption and to enable the community to make the most of this European financial support.

Given the difficulties in submitting invoices by the community and in order not to lose the balance of funds available, the reallocation of the credits to Ministries that reported extra-expenditures in the context of crisis management was considered. In total, of the EUR20.59 million eligible for this repayment, EUR19.61 million<sup>14</sup> had been effectively covered by the EUSF at 31 December 2019.

Even though the funds' credits have been fully committed, the community did not benefit as much as it would have been possible because it was unable to submit the corresponding invoices. Together with its departments, it received EUR25.4 million in repayments (payments in the form of advances and deposits) from the EUSF. However, these reimbursements are less than the EUR38.5 million of invoices submitted in the 14 implementation reports and sent to the prefecture of Guadeloupe between March 2018 and September 2019. This difference is due to invoices that have been discarded for non-compliance of public order rules. The community has extensively applied the concept of emergency situation. However, State services have considered that the emergency situation rhetoric could not be called upon by the community beyond October 9, 2017, the estimated date of "back to normal life" on the territory.

The Court notes, however, that this deadline, set by the prefect of the Guadeloupe region, was formally communicated to the community

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13 Operational programme ESF-State and ERDF-ESF Saint Martin 2014-2020.

14 Some ministries did not, however, complete the reallocation procedure, while others received a transfer order only in 2020 (for a total amount of EUR0.92 million).

only on 19 August 2019 with a retroactive effect over almost two years. As a result, the community have issued many orders since the end of 2017, without knowing formally that the emergency situation had come to an end.

### **The application of emergency situation in post-Irma public procurement**

The imperative situation is circumscribed to external phenomena, unpredictable and irresistible for the buyer. The occurrence of such a disaster could therefore justify the application of Article 30 of the 2016 Public Procurement Code, offering the possibility of derogating from the rules of public order. However, the use of contracts granted without advertising or competition must be explicitly justified and strictly limited to the services required to cope with the imperative nature of this urgency. Thus, as the date of the occurrence of the phenomenon moves away, resorting to this procedure progressively loses its legitimacy.

Even in the absence of a formal decision on the end of this emergency period, this out-of-common-law scheme did not exempt the community from respecting the fundamental principles of public control, namely the principles of equal treatment of candidates, freedom of access and transparency of procedures.

## **B - An ambitious goal of reconstruction in St. Martin, to be contractualised with the State**

### **1 - A very ambitious reconstruction committed stance**

The objective of the State was to provide the necessary financial support and mobilise its services and bodies that could potentially provide technical support to the community. It pledged to strengthen its decentralised services on the territory, so that it could focus and consolidate more its mission of controlling compliance with the law and tax recovery.

For the community, it was more a matter of committing itself to implementing the reconstruction, respecting a financial trajectory guaranteeing its financial balances. This commitment essentially concerns its ability to act in a sustainable way within its field of competence, through the acquisition or strengthening of planning and programming methods, as well as by optimising the financial, human and organizational resources that this requires.



In accordance with the desire of the President of the Republic to seize the opportunity to build an exemplary island in terms of sustainable development<sup>15</sup>, this partnership has set very ambitious perspectives. However, they rapidly turned out to be particularly difficult to implement, even though the objectives set were not specified and the steps to be taken were not clearly sequenced.

## **2 - An unprecedented mobilisation of support to help the community carry its reconstruction out**

As previously pointed out, in 2017, the administrative and technical potential of the community was characterised by under-management and limited capacity of the contracting authorities.

As part of its partnership with the State, and in order to enable the definition and implementation of a large-scale reconstruction plan, the community made a number of commitments in the different agreements concluded: production of a treasury plan, carrying out a full audit of its finances, drawing up a plan to optimise operating expenditure and a multiannual investment programme (MIP), and conducting various actions in the field of urban planning. To achieve these commitments, the community needed to strengthen its management capacity. To help it in this task, the State pledged to mobilise its operators.

With this in mind, the partnership provided for the involvement of AFD (*Agence française de Développement*) in support of the community. The State, in addition to financing the intervention of this operator, has also mobilised the *Caisse des dépôts et consignations* (CDC) and its support services.

### *a) Innovative and decisive mobilisation of AFD*

The support of AFD for the benefit of the community of Saint-Martin had two objectives: structurally strengthen the technical and financial skills of the community and facilitate the implementation of its investment program. To this end, AFD articulated its intervention in three phases.

On the basis of the findings made during the first phase of the financial and organizational expertise, a technical assistance programme

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15 Speech delivered in Cayenne on October 28, 2017.

was drawn up during the period 2018-2019. Then, during the second phase, four technical assistants were mobilised from September 2018 to June 2019, including a coordinator of the Executive and the General Directorate of Community Services. From September 2018 to April 2020, a Technical Coordinator was put in support of the Technical Services Directorate. Two sectoral experts intervened to the Human Resources and Water Management Department. The scheme included sectoral support in finance, public order management and urban development. The AFD also led a mission with Atout France to support the community in the development of its tourism strategy. A third phase, launched in 2020, extended the expertise regarding public order management and engineering.

Fully financed by the Overseas Territories Ministry, the overall cost of this scheme at this stage is up to EUR1.66 million.

*b) A strong State support for community services*

In addition to its support to the community, reinforced by the increase in the number of the workforce in the deconcentrated services and the mobilisation of its operators and bodies, the State also provided human support and expertise.

During 2018, the Ministry of National Education assigned a civilian administrator to the Vice-Rector, made available to the community to support the reconstruction of school facilities. This support, still effective today, has been conducted in close coordination with the project managers' reinforcement organised by AFD.

In the area of urban planning, the Ministry of Housing has developed a workshop-approach so that residents, elected officials and administrative officials jointly elaborate on a local development strategy.

Initiated in the course of 2019, this approach, aimed at facilitating the conduct of urban planning projects, was interrupted due to tensions between the State and the community in September 2019 regarding the adoption of the Natural Hazard Prevention Plan (NHPP). It ought to be relaunched soon.

The State had also pledged that several general ministerial inspections would conduct an economic audit of the territory. The report “*What strategy for economic and social development for Saint—Martin and Saint-Barthélemy?*” recommends<sup>16</sup> strengthening a tourism strategy oriented towards a high-end public. This would require an upgrading of facilities, a tax simplification and the development of sectoral schemes for other economic activities (fishing, agriculture, ship repairment trade). In addition, the report calls for strict management of social benefits not to foster a suffered immigration.

While the community did not agree with all of these proposals, it nevertheless shares the strategic direction on tourism and has already embarked on some reforms, such as taxation.

Other inspection missions were carried out, including with the Water Service, and a mission on joint-ownership was planned in the fall of 2022. However, it has not been achieved yet due to the sanitary crisis.

#### *c) An involvement of the Caisse des dépôts et consignations*

In early 2018, the Bank of the Territories supported several initiatives funding the expertise and state of digital infrastructure. It co-financed the updating of the plan for digital development and the development of the “Tintamarre” project for the burial of telecommunications networks. Within the framework of this project, it undertook to finance the creation, with its own funds, the supporting body of the community and operators.

### **3 - Strengthening of the State support and control mission**

The strengthening of the permanent representation of State services in Saint-Martin was already undergoing in 2017 before the hurricane occurred. The March 2018 report, cited *above*, notes that the upgrade plan drawn up by the Prefect Delegate in 2007 was still not fully implemented. This upgrade is now under way with the establishment of territorial units (Directorate of Environment, Planning and Housing, Directorate of Enterprises, Competition, Consumption, Labour and Employment, Directorate for Youth, Sports and Social Cohesion, Directorate of Food, Agriculture and Forestry) whose workforce increased from 17 to 29 Full-

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<sup>16</sup> IGF-IGAS-CGEIET, *Quel stratégie de développement économique et social à Saint-Martin et Saint-Barthélemy?*, March 2018.

Time Equivalents (FTEs). Reinforcements were also provided to the Prefecture, with the number of agents increasing from 33 to 38 FTEs. Despite these reinforcements, the prefecture of Saint-Barthélemy and Saint-Martin does not have the resources of a full-fledged prefecture, as wished by the President of the Republic on his speech for the inauguration of the provisional buildings of the State, during his second on-site visit on 30 September 2018.

On judicial grounds, a local court was established in Marigot in May 2019.

The community recognises these achievements, but underlines the absence of representations from other administrations (Departmental Directorate for Competition, Consumer Affairs and Fraud Control, the Directorate-General for Civil Aviation), and still regrets the issue accessing certain services by the Commercial Court and the Labour Council or access to the law (aid to victims, violence against women, etc.) because of remoteness. The community considers that the limited representation of certain institutions, such as the CAF, the Overseas Departments' Emission Institute, the General Social Security Fund (CGSS in French), the Banque Postale, harms potential users and contributes to the non-use of social benefits in Saint-Martin<sup>17</sup>.

This assessment deserves being put in perspective in view of the existence of two public service houses, located in the two priority neighbourhoods (Sandy Ground and Quartier d'Orléans). These facilities have been the subject of constitutive agreements in partnership with Pôle emploi, the CGSS, the CAF, to which are added the Ministry of Justice (point of access to rights), the Association France Victimes and the Association pour le droit à l'initiative économique, and have received funding from the State.

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<sup>17</sup> In 2018, Saint-Martin was one of the poorest communities in France in terms of GDP/inhabitant, after Mayotte (EUR8,552), Wallis and Futuna (EUR10,100 in 2005), at a level close to that of Guiana (EUR15,765).

## **II - A near-complete reconstruction in Saint-Barthélemy**

The reconstruction of the building stock was carried out in accordance with the procedures of the common law for urban planning and construction, using simplified authorisation procedures to speed up its processing. The community intervened only in areas within its field of competency and provided support to people in precarious situations facing with the degradation of their habitat.

For the public building stock, several community facilities (music school, airport, church tower) suffered significant damage. Almost all of the street lighting equipment and green spaces, but also two sections of the road and the water treatment plant of Gustavia that had been utterly, were quickly rebuilt.

### **A - An organised reconstruction of communal facilities and buildings**

The reconstruction of communal infrastructure and buildings was done in a sequenced way. In the immediate post-crisis period, work was mainly devoted to securing roads, buildings and electrical and telephone networks. They were then initiated in order of priority on the basis of the provisions of Article 30 of Decree No. 2016-360 of 25 March 2016, allowing the use of public contracts negotiated without prior advertising or competition in the event of an emergency situation<sup>18</sup>. Finally, as of the end of November 2017, a reconstruction phase began and the community got back to common law public control. In this context, the Gustavia water treatment plant was renovated and rehabilitated in April 2018.

An initial programme for the reconstruction of electricity networks over a four-year period was developed in consultation with EDF. The reconstruction of communal facilities and buildings in Saint-Barthélemy is now completed. To prevent the possible consequences of similar events, precautions have been taken to secure public buildings. The new equipment is now designed in a way that takes into account cyclonic and submersion risks.

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<sup>18</sup> The prices applied having been based on reference markets.

## **B - A quasi-neutral cost for the community**

The community's financial situation was not heavily affected by the hurricane and it maintained its fiscal and budgetary balances. Limiting the impact of the decline of management outputs in 2018, the Government cancelled, as indicated, the payment of the overall negative compensation allocation for that year. It also supported businesses by facilitating the initiation of a part-time activity scheme and proposing a moratorium on employers' social security contributions.

The level of tax resources has now exceeded the highest amount of the pre-cyclonic period in 2019. Management costs remained contained. Self-financing capacity stabilised on an upward trend and the community did not use borrowing, thus remaining without long-term indebtedness.

## **C - Lessons learned by the community**

### **1 - In the field of urban planning and construction law**

The community has not changed its urban planning rules consequently to Irma and only published a set of guidelines regarding construction. Reflections are under way on the obligation to develop a secure room for each dwelling, on the creation of a shelter level in flooded areas and on the need to impose protection of openings.

### **2 - The specific equipment projects in debate**

The hurricane highlighted the vulnerability of electricity and communication networks, despite the efforts already undertaken to make them more resilient. A three-year programme for the burial of all lines and protection of transformer posts was launched in partnership with EDF, which the Fonds d'amortisation des charges d'électrification (FACE) co-financed to the tune of EUR9.7 million. A new water tank with a capacity of 800 m<sup>3</sup> was delivered in the second half of 2020 and another is planned to double the overall storage capacity of drinking water.

In Gustavia, the development of a 150-seater underground car park located in the heights of the city is envisaged with the possibility of using it as a safe shelter for the population and for public utilities vehicles.

A study was launched for the design of a submersion protection structure of the main access road to the city. Pooled and protected units for the storage of technical equipment are also considered.

The construction of a second waste incineration plant, scheduled for 2021 at an estimated cost of EUR15 million, aims at strengthening the capacity of the existing plant, which failed to absorb the entire waste production following the post-Irma reconstruction.

In the long term, the island's connection to a third submarine cable, as well as the community's control of highly strategic spots and the management of antennas of the public system or delegated are under consideration.

Finally, to warn the population, the deployment on the territory of loudspeakers connected to a fibre network is underway. Studies are also being conducted to design an alert system broadcasted via all mobile phones.

### **III - A reconstruction far from being completed in Saint-Martin**

#### **A - Almost half of the building and equipment stock rebuilt**

In St. Martin's territory, reconstruction is not the result of a comprehensive approach. Its achievements' level is only known from the satellite data of the European space programme Copernicus and the census carried out among the contractors or their delegates. According to data obtained in July 2019, only 20 per cent of the buildings destroyed had been rebuilt. This rate is increased to 55 % for severely damaged buildings, but 40-49 % of the entire altered stock has not yet been rebuilt.

Data on private building stock is incorporated into this analysis. Its reconstruction is mainly linked to the conditions of insurance compensation, being specified that 3/5<sup>th</sup> of the population were not insured. The French Insurance Federation estimated the amount of damage to be EUR1.13 billion for 17,110 claims. By the end of June 2019, EUR926 million had been paid.

Besides, the entire social housing stock has been rebuilt.

**Table No. 4 : data on Saint-Martin social donors reconstruction**

<b>Donors</b>	<b>SIG</b>	<b>SEMSAMAR</b>	<b>SIKOA</b>
<b>Fleet/number of dwellings</b>	485	1 085	132
<b>Degradation</b>	90 % roofs and 50 % carpentry Deterioration due to flooding		
<b>Estimated amount of work</b>	EUR22.9 MILLION	EUR 50 MILLION	EUR8.3 MILLION
<b>Financing</b>			
<b>Own funds</b>	EUR2.8 MILLION	EUR 11 MILLION	EUR0.1 MILLION
<b>CDC borrowing</b>		EUR7.8 MILLION	EUR2.4 MILLION
<b>Single Housing Fund</b>	EUR1.7 MILLION	EUR3.4 MILLION	EUR0.48 MILLION
<b>Insurance</b>	EUR18.4 MILLION	EUR 30 MILLION	EUR5.2 MILLION

*Source: Data collected from the social housing organisations cited above*

A major effort has been devoted to the reconstruction of school facilities and sports facilities. The completion of the upgrading of first-level public schools recorded in the summer 2020. The reconstruction and renovation of high schools is completed or near to be. As far as the multimedia library, the nautical centre and the “college 900” project are concerned, engineering studies are still under way. For example, out of EUR44.9 million in capital expenditure in 2018 and 2019, EUR16.9 million had been spent on school infrastructure.

As regards to the hospital, the damage was estimated by insurance experts and technical services from French metropolitan hospitals at EUR9.4 million, including EUR1 million in operating losses. The hospital received an insurance allowance of around EUR7.89 million and the work is now completed. These costs include a higher-level rehabilitation to reduce the vulnerability of structures, taking into account the lessons learned from the hurricane.

With regard to the Bethany Home Ehpad (care home) in Saint-Martin, repair works were carried out by SIG, the owner, with the same objective of reducing vulnerability.

Regarding networks, the electricity network has been quickly put back into operation. A major project for the burial of the electricity lines



has been initiated. The grounding of the network is now completed up to 80% and is expected to be fully-completed by the end of 2021. The electrical connection is 60 % completed and is also expected to be completed this year. This work totalling EUR23 million was delegated and managed by EDF and financed up to 80 % by the FACÉ and 20 % by EDF.

The water system was re-established in a few weeks, with the exception of the revival of the water treatment plant, which was much more difficult to put back in service. 8,000 water meters have been renewed over a longer period of time. A network modernisation plan is now integrated into the community's MIP (Multiannual Investment Programme).

With regard to other public buildings and facilities, now housed in temporary structures, the establishment of an administrative agency comprising all the decentralised services of the State and a new prefecture is planned.

The reconstruction of State and communal facilities and public buildings has been carried out by constantly arbitrating between “like with like” reconstruction and renovation and modernization actions.

## **B - A refounding of the services only committed**

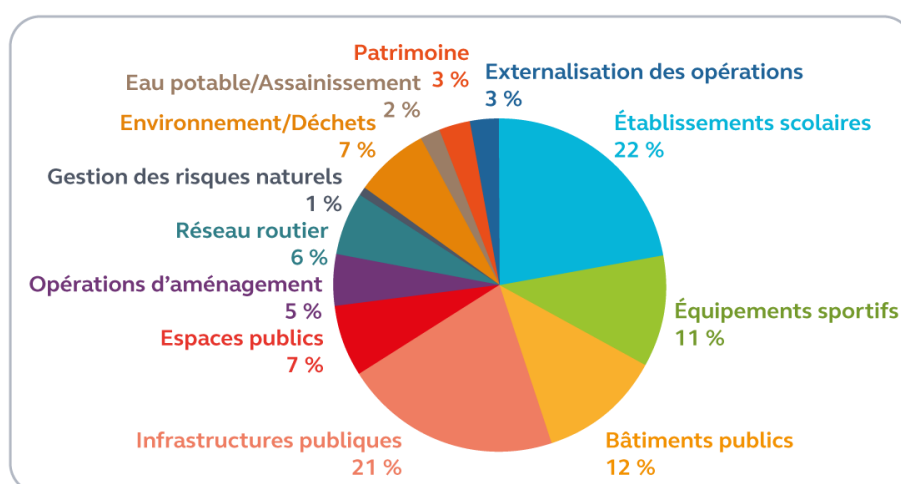
Thanks to the diverse help received, in 2019 the community was able to adopt a new organizational chart incorporating the reorganisation of its services and the recomposition of its upper-management. Since September 2019, the head management of the community has been organised into five poles. A consulting firm has been mobilised to help with the establishment of this new organisation, strengthen its restructuring capacity and promote a management culture within the services.

In the area of human resources management, important regularisation and organizational work has been carried out since 2018, with the support of the AFD's expertise, as part of a comprehensive service project.

## **C - A development plan to be put into practice**

### **1 - An ambitious multiannual investment programme**

In 2018, the community established a MIP for the period 2019-2023, for a total amount of EUR230 million (including EUR63 million planned for 2020).

**Graph no. 1 : thematic distribution of MIP projects**

Source: Report on the presentation of the 2020 budget orientation debate of the community of Saint-Martin

Reconstruction work accounts for almost 53 % of this programme (EUR121 million) and new projects for 47 %.

According to the Introduction Report to the Budget Guidance Debate for 2020, EUR98 million was to be spent over the years 2019 to 2021, which corresponds to 81 % of the planned reconstruction projects.

The MIP, from 2021 to 2023, presented at the Territorial Council of 31 March 2021 and which provides EUR145 million in investments over three years, is now a shared document within the community's services<sup>19</sup>. After a very strong increase in investment expenditure in 2020 and 2021 (from EUR34 million in 2019 to EUR63 million in 2020 and EUR45 million in 2021), a decrease in 2022 and 2023 is observed, as it traditionally is towards the end of programming<sup>20</sup>. The implementation

<sup>19</sup> Its update and follow-up are organised. Each actor in the community is able to refer to it: the executive to arbitrate and set priorities; the Directorate-General to prepare the work of the executive; technical services to implement the objectives; and financial services to ensure cash flow and funding needs.

<sup>20</sup> At the Territorial Council on April 12, 2021, the MIP was refined over the period 2021-2023: presented for the first time in AP and CP, for the three years concerned, it will amount to EUR153.3 million, of which EUR37.3 million will be invested in 2021. The greater deployment of the scheme is expected to materialise in 2022, with nearly EUR67 million in payment appropriations planned for next year.

of the MIP is conditional on the payment of the financing provided in the Convergence and Transformation Contract (CTC)<sup>21</sup>.

## **2 - A financing framework, agreed in a contract, to be implemented**

The funding commitments were reflected in the signing of a CTC in June 2020 that links the State and the community during the period 2019-2022.

The State has committed EUR47.2 million and the community EUR31.4 million. EUR42.2 million in national credits, EUR6 million in deconcentrated credits and EUR23.8 million in regional credits from European funds are also available for financing the projects identified.

The CTC is reflected in an operational plan of action that incorporates the 17 Sustainable Development Goals established by the United Nations and reflected in the Paris Agreement, as well as the specific needs of persons with disabilities and the integrated approach to equality between women and men.

Beyond this CTC, in December 2020, the community and the prefecture negotiated additional funding under the French economic recovery plan and the REACT-EU plan (in their ultramarine component).

## **D - Cooperation with the Dutch side to revive**

As mentioned *above*, cooperation with Sint Maarten suffers from a weakness in its implementation and in its scope. While at the time of Hurricane Irma, cooperation projects were underdeveloped, they were clearly committed in 2018. A quadripartite meeting, bringing together the Netherlands, France, Sint Maarten and Saint Martin, concluded with a roadmap and the creation of intermediate technical groups to facilitate its implementation.

In this context, a crisis management agreement, drawing lessons from Irma's experience, was signed in October 2019. Several other agreements have made it possible to strengthen cooperation in the areas of

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<sup>21</sup> The CTC of St. Martin represents the budgetary translation for the territory of the ambitions set out in the Blue Book of the Overseas and the declination of the convergence plan. This contract replaces the 2014-2020 development contract.

security (e.g. exchange of market data, harmonisation of ship safety issues, etc.).

Although this momentum came to an end in the autumn of 2019 with the fall of the Sint Maarten government, many consultations were nevertheless carried out during the health crisis. The last hurricane season also gave rise to regular exchanges, without, however, systematically leading to joint measures concerning the closure of enterprises or public services. It should be noted, however, that the Dutch meteorological services and Météo France have harmonised their warning systems.

In December 2020, the new government of Sint Maarten declared that it wanted to initiate a process of quadripartite meetings on the issue of immigration.

## **CONCLUSION**

*The differences in situations between the two French authorities, being administrative, institutional, economic, or caused by the variable intensity of the suffered, logically led to differences in the speed and effectiveness of the reconstruction.*

*In Saint-Barthélemy, the reconstruction can be considered as almost completed.*

*In Saint-Martin, on the other hand, despite the conception of an ambitious development plan, the rebuilt building stock is still limited and the restructuring and strengthening of services, if committed, remain poorly advanced.*

*Important challenges remain to be met if the reconstruction of the territory is to be completed, even though the exemplarity for this reconstruction is not acknowledged today.*

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# **Chapter III**

## **Completion of**

### **Saint Martin's reconstruction facing**

### **important challenges**

The reconstruction in Saint-Martin was part of an ambitious and complex framework. It aimed at rebuilding quickly, while simultaneously allowing the community to carry out operations and contribute to their funding. The State provided this funding and technically supported the community, but the reconstruction, if committed, has still not been completed. To bring it to an end, the community of Saint-Martin continues to face several challenges and will not be able to meet them without the continued support of the State.

#### **I - An ambitious development and reconstruction plan still to be carried out**

##### **A - Strengthening local capacity for public ownership and commissioning**

###### **1 - Strengthening of the management of works**

While the community, strongly supported by external technical expertise, has well started the reconstruction of the equipment, the management of programming and engineering does not yet have the number of qualified officers required to pilot the entire MIP.

According to the AFD, given the number of projects to be carried out, management should consist of three to four technical Category A executives, in addition to the director of the department, whereas today only one executive is present. This team should also be multidisciplinary to cover all the technical specificities linked to roads, buildings and development. An architect and an urban planner would coordinate and supervise the multiple studies and consultations undertaken in the field of construction and development in order to ensure unity of view and long-term coherence of all this work.

This organisation is necessary, even if the community wishes to subcontract some of these tasks to the mixed economy society SEMSAMAR.

## **2 - Control of the risks inherent to the procurement function**

In terms of public ordering, reconstruction normally leads to a large volume of public purchases. However, it appeared that the services were physically unable to formalise appropriate procedures. Within the community, the practice of public procurement suffers from a severe lack of legal competence, a lack of adaptability and technical expertise. For example, many malfunctions have led to several judicial proceedings since the end of 2017.

This lack of control of the rules of public order does not allow the community to properly incur its expenses and leads to numerous rejections of mandates sent to the public accountant. In the 2019-2020 period alone, 1,113 mandates were rejected for a total amount of EUR23.3 million<sup>22</sup>. This cumulative amount amounted to EUR33 million as at 31 December 2020.

The reorganisation initiated by the community in 2020 is only the first step in a much-needed redevelopment of the procurement function with the deployment of important measures for the rationalization of the process. The training of agents and the awareness of elected officials and suppliers of public procurement should also contribute to the deployment of a culture that respects these rules in Saint-Martin.

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<sup>22</sup> This amount does not take into account a significant input error over the period, of more than EUR9 million. In addition, these data should be relativised. Indeed, a number of rejections of warrants, for identical amounts and suppliers, presented on different dates, can be interpreted as double submissions. A reliable study would have required all mandates to be pointed one by one, identifying the corresponding invoices, in order to verify that they had not been rejected several times.



## **B - Complete urban planning and prevention plan against natural hazards**

By the end of December 2020, the updating of land use planning documents had not yet been completed. Started in 2017 after several previous failures, it evolved only very slowly. If the health crisis does not facilitate its implementation, this reform, which could create new constraints on the establishment or reconstruction of buildings, is a source of tension in a territory where the available land is limited. An event of the magnitude of Irma required to draw the consequences and update this document<sup>23</sup> dating back to 2011. The slow updating of the Natural Hazard Prevention Plan (NRPP in French) is indicative of the challenges faced by the community. This is mainly due to the fact that it will provide with certainty a ban on building in areas at risk.

This plan is now one of the key instruments of the State's action to prevent natural hazards and reduce the vulnerability of people and property. In September 2018, the President of the Republic recalled its importance and called for the adoption of an updated plan before the end of 2019. Government services worked to meet these deadlines and a draft version of the NRPP was produced in the summer of 2019, but it resulted in a strong social challenge and an unfavourable public opinion from the community with respect to its adoption.

The preparation of this document has since taken place in a conflicting context, leading the administrative court to rule on the various disputes relating to actions taken on both sides.

However, a potential solution emerged as a result of the joint mission of the General Inspectorate of Administration and the General Council for the Environment and Sustainable Development in December 2019 and January 2020.

As far as land law is concerned, the community-based urban planning police has not yet been implemented satisfactorily. Only one person is sworn in and his action is not followed by sufficient effects. On the basis of about 100 findings drawn up between October 2017 and the

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<sup>23</sup> The NRPP, established by the Act of 2 February 1995, is defined by articles L. 562-1 et seq. of the Environmental Code and must be carried out within three years from the date of limitation. This period may be extended by 18 months only once. The NRPP may be amended or revised. The NRPPh is a public utility servitude associated with criminal sanctions for non-compliance with its requirements and consequences in terms of compensation for natural disasters.

end of 2019, 36 minutes were drawn up but only ten were transmitted to the judicial authority. The commissioning of DEAL officers for the exercise of environmental and urban planning polices has helped to maintain a high level of reporting to the Public Prosecutor's Office. It is important that the community significantly strengthen its action as part of this monitoring mission.

### **C - Provide the community with rules of law to resolve the issue of abandoned property**

In addition to temporary arrangements to facilitate the reconstruction of houses and buildings, the community has introduced a requirement for a secure room in any new housing building.

Henceforth remains the need to provide the community with the legal framework enabling to deal with degraded and abandoned private property. Most of the destroyed building stock though, in particular the old hotels resulting from the 1990s' tax exemption measures, is still not rebuilt. It poses risks safety for people and undermines the quality of the landscape, essential to the development of tourism.

With this in mind, the procedure for property in a state of manifest abandonment, provided in Articles L. 2243-1 to L. 2243-4 of the CGCT, should soon be extended and adapted to Saint-Martin.

## **II - A multiannual investment plan still unfunded**

The forecast investment program is a strong financial requirement for the community. In addition to external financing of the convergence contract and recovery plans, the community will have to provide the required share of self-financing. It will also have to maintain a sufficient level of cash flow for its daily activity.

This mobilisation of funding requires therefore that a rigorous, clear and precise financial trajectory is established and maintained.

## **A - Mobilising the necessary tax revenues**

### **1 - An investment programme with a high budgetary and financial impact**

During the 2020 budget policy debate, the MIP (Multiannual Investment Plan) was estimated to be EUR230 million for the period 2019-2023 and during the same debate in 2021, at EUR145 million from 2021 to 2023. These financial perspectives, because of their volume, are inconclusive with what the community has assumed so far. In the financial years 2013 to 2018, the annual amount of investment expenditure realised was EUR25 million on average. The new programme involves an average level of expenditure of EUR46 million per year, almost doubled.

At the same overall volume and taking into account the delays, the annual budget average from 2013 to 2018 should therefore almost tripled from 2021 to 2023.

For the financing of this MIP, the community had planned to mobilise EUR136.7 million of external resources (convergence contract, remaining development contract, European ERDF funds, etc.) in early 2020, which led to a remaining EUR93.3 million for the community. This contribution will necessarily be readjusted with the expenditure and revenues of recovery plans. In order to mobilise its internal resources, the community will need to integrate the constraints inherent of the local finances framework (Cahors contracts<sup>24</sup>) and its commitments from the 2017 protocol updated in 2019<sup>25</sup>.

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24 The approach of contractualisation between the State and local authorities, initiated in 2017 in Cahors, aims at developing a partnership for the regulation of local expenditure. In return for the effort to reduce operating costs required to the communities, the State guarantees the predictability and stability of its financial assistance, renouncing the reductions in the overall operating allocations implemented from 2014 to 2017.

25 An evolution of 10 points on the remains to be recovered, a recovery rate of rolling taxes which must exceed 80 %, a recovery rate of so-called "pocket" revenues (urban planning tax, DSP, farm, AOT) which must evolve upwards with a target of 90 % from 2020, on the basis of an increase in securities issued by the community.

## 2 - A financial contribution from the community heavily dependent on its tax revenues

Tax revenues, which account for 71 % of the community's operating revenues, after declining in 2017, gradually resumed their upward trend in 2018 (initially committed in 2012).

**Table No.5: Evolution of the Community's tax products (in EUR)**

<b>Taxes</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Total tax proceeds	73 917 763	89 280 146	97 464 821	73 446 718	74 640 399
Compensation State	0	0	0	12 120 000	25 000 000
<b>Total</b>	<b>73 917 763</b>	<b>89 280 146</b>	<b>97 464 821</b>	<b>85 566 718</b>	<b>109 640 399</b>

*Source: Directorate General of Public Finance – Saint-Martin Public Finance Centre*

In 2019, the Community's tax revenues of EUR109.6 million exceeded the average for the period prior to 2017 (equivalent to EUR101 million per year). This trend is mainly due to the growth of indirect taxes, linked to the increase in reconstruction operations in 2019. This trend was affected by the health crisis in 2020.

For the future, the potential for tax revenue development will depend on the prospects for the implementation of the tax reform, the draft legal transcription being finalised in December 2020. This tax reform, which has a focus on tourism-related activities, is structured around three pillars (consumption, income, wealth). It aims at simplifying and deploying indirect taxation.

The community links this reform to the need for a modernised tax management and strengthened tax control. These objectives must be quickly taken into account by the public accountant responsible for the recovery, in particular by adapting the IT application.

The importance of the revenue concern must lead to coordinated action by the community, which institutionally decides on the tax, and of the State which, by convention, collects it.

## **B - Securing a balanced fiscal and financial trajectory**

The community has strengthened its financial management capacity. This initiative illustrates the awareness of the budgetary, financial and accounting management requirements attached to the implementation of an important development plan.

The community must now anticipate how it intends to fund its contribution to the forecast investment programme and assess the consequences of its future trade-offs between self-financing and long-term debt. While the correlation between budget planning, the MIP and project selection is now underway, this is not yet the case for the determination of a sound financial trajectory.

Beyond progress in the programming of unrecovered debt clearance, it is important, in order to determine this trajectory, to improve the reliability of accounts and to establish a strategy to clear the community's stock of debt towards its suppliers.

At the end of the third quarter of 2020, the community's treasury stood at EUR43.5 million, but at the same time the stock of debt owed to suppliers amounted to EUR34.7 million.

At the end of 2020 prospects were emerging to deal with the numerous rejections of payment orders by the accountant. On the other hand, the cross-debt with the CAF, managing the RSA (Supplementary Welfare Allowance) on behalf of the community, which amounted to EUR18.7 million, was still not subject to a resolution plan<sup>26</sup>.

## **III - The indispensable continuation of technical support from the State**

The ambitious reconstruction plan selected in 2017 involved, in fact, a strong State support to the community, which alone could not meet these challenges.

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26 The constant growth in social security contributions inherent in the RSA since 2012, if it has been contained, has led to the creation of a 30 % levy from beneficiaries of the RSA, established by the local authority in 2014 and applicable since 2015 as a result of its fiscal autonomy. This levy placed the CAF in a position of collector of a tax on the RSA, which the XAG does not recognise for reasons of principle. In addition, it cannot technically repay this tax to the community because of its nationally organised IT system.

## **A - Adapt and modernise as a matter of priority a tax recovery delegated to the State**

### **1 - Modernisation of tax recovery**

While in recent years the Regional Directorate for Public Finance (DRFiP) has carried out several actions aimed at optimising the collection of tax revenues, too often the latter still faces strong limits: an address issue that falls within the competence of the community, but also a non-modernised IT accounting system, consisting of non-integrated tools, particularly in the area of control, which is the responsibility of the State as a result of the agreement on tax collection concluded with the community.

The evolution of the community's tax system must henceforth lead the state services to make important adjustments to this information system (tele-reporting and electronic payment, tax account accessible online, etc.). For its part, the community must deploy a comprehensive addressing system as soon as possible, so as to allow for the calculation and collection of tax.

### **2 - The need for concerted action between the community and local tax services**

The shared competencies between the DRFiP and the community regarding tax collection are highly intertwined and interdependent. Given the stakes, the multiple issues to be overcome are a source of tension. The litigation path that was chosen in 2020 may be long and appears unsuitable.

In addition to the 2008 partnership protocol, the DRFiP must take full account of the provisions of the Protocol of 6 November 2017 aimed at strengthening Saint Martin's fiscal autonomy. This partnership is the foundation for the financing of reconstruction and is therefore a condition for its success.

This commitment of the State echoes the observations already made in December 2017 by the Court in the context of its investigation into the action and interventions of the State in Saint-Barthélemy and Saint-Martin : *While it is necessary to update the 2008 Management Convention in order to take account of the role now played by the community in the field of tax information systems, it is nevertheless up to the tax administration to provide it with the human and technical assistance necessary for the development of applicative tools suited to its taxes, with partial payment of their development costs, otherwise the provisions of the above-mentioned*

*organic law would be emptied of their meaning and the effectiveness of the tax autonomy of the community harmed.*<sup>27</sup>

The Court regrets that this recommendation has still not been implemented. The mobilisation of a joint project manager, as permitted by the CGCT and stated in the State-community partnership of 2017, would constitute a working modality that would facilitate dialogue. The community indicated in the contradiction phase to be receptive to this perspective.

## **B - Assess and adapt the partnership between the State and the community to maintain an effective collaboration**

The partnership with the community in 2017 led the State to provide very important support. It also showed a willingness on both sides to resolve all disputes and deadlocks arising after the institutional transition from 2007 to 2012. In 2021, however, several commitments, with no direct impact on reconstruction, have not been followed up today.

### **1 - Review unfulfilled commitments to strengthen the partnership**

#### *a) Definitively close the institutional transition of 2008*

The 2017 partnership intended to revert to two points related to the institutional transition of 2007/2008 and, in particular, to the implementation of a catch-up plan and the arrangements for fixing the allocation of compensation for some delegated responsibilities.

The adoption of a catch-up plan is an old claim of the community attached to the terms of its creation in 2007. It is referred to in article L.O. 6345-3 of the CGCT and has not been realized yet.

There was also no working group meeting to review the modalities for assessing the responsibilities delegated to the benefit of the community.

The Court observes that the claim of this catch-up plan must now be assessed on the basis of the investment programme contained in the convergence contract concluded between the State and the community.

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<sup>27</sup> Court of Accounts, reference to *State action and intervention in Saint—Barthélemy and Saint-Martin*, 22 December 2017, <https://www.ccomptes.fr>

As regards to the modalities to compensate the community for the responsibilities delegated, it is now important that, in the absence of such a commitment, the State should take into account the reasons underlying the request of the community, in particular the difficulties inherent in the management of the RSA and its financial consequences. The community, which has made significant efforts to control the RSA burdens, and the State must find a solution. The indeterminacy of cross-debt settlement with the CAF also has a significant impact on the quality of the community's budget and financial management.

*b) The reconstruction process needs to be monitored more regularly and documented.*

The protocol's commitments have been achieved with mixed results. While initiatives have been taken, several commitments have not been implemented, or have only been partially implemented.

A quarterly review of the implementation of the protocol was presented at the meetings of the Inter-Ministerial Committee on reconstruction, which were held up to September 2018. Keep issuing these balance sheets would have helped improve management and follow up on mutual commitments.

As regards the commitment to statistical production, the INSEE has started methodological works to determine whether available sources would allow a reliable calculation of an annual GDP of Saint Martin. It proposes to provide a one-time methodological support about its competences. For its part, the community has created a statistical unit that has moved closer to the statistical department of Sint Maarten.

Finally, the State's action in St. Martin should be more clearly reflected in the budgetary documents. The Government is expected to present annually, on the occasion of the consideration of each finance bill, a review of the reconstruction operations to the Overseas Delegations of the National Assembly and the Senate. This commitment, which has not been kept to date, must now be implemented.

## **2 - Adjust the necessary expertise support from a more strategic perspective**

Reconstruction poses multiple challenges to professional actors, whether they are in the areas of administrative management, construction or civil engineering. The capitalisation on their experiences was well planned as part of the partnership between the State and the community. While, in this context, a guide to good practices in reconstruction for



architects and civil engineering professionals has been drawn up, the international colloquium scheduled for July 2018 in Saint-Martin or in metropolitan France (Montpellier) did not eventually take place because of its cost.

However, it would be necessary for communities that have faced the same climatic phenomenon to be able to benefit from the experience and lessons learned.

The important project for improving management and contracting , led by AFD and an agent from the Ministry of National Education, contributed to the capitalisation of this experience. This support was essential to the commitment to the reconstruction of school facilities.

In view of the important strengthening of the community's management capacity, it is now important that the evolution of its organisation keeps being as transparent as possible. It ought also to be part of a change involving all agents and joint bodies.

With this in mind, it would be useful to realise an inventory of the community's internal management capabilities and then to develop a service project and a human resources forecasting scheme.

## **CONCLUSION AND RECOMMENDATIONS**

*To achieve the reconstruction of Saint Martin, the community must take up several challenges: develop the legal expertise and tools necessary to carry out its ambitious development plan; mobilise the required funding; ensure the technical support of the State in both management and expertise.*

*In this regard, the next few months will make it possible to better assess whether the method chosen and the means used remain the most appropriate to the specific status, situation and difficulties of this overseas community.*

*Accordingly, the Court makes the following recommendations:*

- 1. complete the updating of urban planning and intensify the implementation of the administrative police of urban planning (community of Sait Martin);*
- 2. extend and adapt the legislation on property in a state of manifest abandonment provided for in Articles L. 2243-1 to L. 2243-4 of the CGCT in Saint-Martin (Ministry of Overseas, Ministry of Territorial Cohesion and Relations with Local Authorities);*
- 3. follow up on public funds mobilised for the reconstruction of Saint Martin (Overseas Ministry);*
- 4. formalise and implement a procurement policy with the necessary tools (community of Saint-Martin);*
- 5. adopt a medium-term financial trajectory consistent with the financing of the development and reconstruction plan (Saint-Martin community);*
- 6. carry out an impact study of the future tax reform (community of Saint-Martin);*
- 7. establish effective collaboration between DRFiP and the community of Saint-Martin (Ministry of Economy, Finance and Recovery and Community of Saint-Martin);*
- 8. take stock at the end of 2021 of the contributions and technical support provided by the State and AFD to the community service project (Ministry of Overseas, AFD, Saint-Martin community).*

## General conclusion

Unlike St. Barthélemy, the reconstruction of Saint-Martin, four years after the passage of the hurricane Irma in September 2017, was not yet completed in the summer of 2021 whereas the territory has barely 40,000 inhabitants. Beyond the massive amount of material damage, the twofold choice made right after the disaster not to rebuild like-with-like and to rely on the community leadership explains the delay that affects the residents and the activity of the island.

Over the past three years, the framework for community action and, to a lesser extent, that of the State, have been strengthened in order to integrate the reconstruction effort into an ambitious development project.

Its realisation remains limited and the construction of the equipment planned remains insufficiently advanced and perceptible. In addition, the health crisis in 2020 weakened this process by imposing additional constraints.

The diversity of the reconstruction arrangements envisaged by France and the Netherlands illustrates the complexity of the responsibilities between a State called upon to provide exceptional financial support in the name of national solidarity and a community with a large fiscal and management autonomy. The State, which remains the guarantor of last resort, must uphold strict principles of the use of public funds and maximise their impact, without compromising the autonomy of the community.

The issue is all the more complex given that the climate event has been of exceptional gravity, causing considerable damage, striking a small isolated ultramarine community, largely deprived of the expertise and administrative resources necessary and economically fragile.

It is important that, in the coming months, with the support of the State, the community overcomes the challenges and completes its reconstruction, which is intended to be sustainable and exemplary, and ensuring, *inter alia*, that the rules of risk prevention are respected.

It is essential to learn all the lessons for the future of the passage of the hurricane Irma, in order to develop prevention and also to improve the capacity to respond to climate events of this magnitude, be it emergency management or reconstruction. These lessons concern Saint-Martin but, more broadly, many ultramarine communities with similar geographical characteristics and vulnerabilities.

To a significant extent, the response to these challenges is based on the strength of local public actors, State support and national solidarity, and also on strengthening regional cooperation.

This necessary integration into a regional system goes beyond relations between the French territories alone. It also implies, as the example of Saint Martin and Sint Maarten illustrates, the development of cooperation with neighbouring States for the security and prosperity of the inhabitants of these territories.

## List of abbreviations

AFD .....	French Development Agency
CAF .....	Family allowance fund
CDC .....	Caisse des dépôts et consignations
CGCT .....	General Code of Local and Regional Authorities
CGEIET .....	General Council on Economics, Industry, Energy and Technology
CGSS .....	General Social Security Fund
CJF .....	Code of Financial Jurisdictions
DEAL.....	Directorate of Environment, Planning and Housing
DRFIP .....	Regional Directorate of Public Finance
DSP .....	Delegation of public service
EHPAD .....	Accommodation facility for dependent elderly people
FTES .....	Full-time equivalent
FACÉ .....	Depreciation fund of electrification expenses
ERDF .....	European Regional Development Fund
ESF .....	European Social Fund
FSUE .....	European Union Solidarity Fund
IGAS .....	General Inspectorate of Social Affairs
INSEE .....	National Institute of Statistics and Economic Studies
GDP .....	Gross domestic product
PPI .....	Multiannual Investment Programme
PPRN .....	Plan for the prevention of natural hazards
OCT .....	Overseas country and territory
REACT-EU .....	<i>Recovery assistance for cohesion and the territories of Europe</i>
RSA .....	Income from active solidarity
RUP .....	Outermost region
SEMSAMAR .....	Société d'économie mixte de Saint-Martin
GIS .....	Société immobilière de la Guadeloupe



# **Annexes**

Annex No. 1: Controls carried out by the Algemene<sup>64</sup>the Dutch Higher  
Audit Institution for Public Finance (ISC)<sup>64</sup>

## **Annex No. 1 : Controls carried out by the *Algemene Rekenkamer*, the Dutch Supreme Audit Institution of Public Finance (SAI)**

According to the procedures of this supervisory institution, a first assessment work took place as early as 2018, one year after the event. It has been supplemented by a regular update, carried out as part of the annual Dutch overseas assessments.

The World Bank is the main operator chosen by the Netherlands to lead the reconstruction project. In its initial report of 2018, the *Algemene Rekenkamer* noted that a year after the disaster, few aid funds had been spent on Sint Maarten. Beyond the difficulty of massively mobilising the funds granted because of the multiple guarantees required by the operator, the reconstruction also faced a lack of local staff and expertise. This situation required the deployment of technical assistance. In 2019, the Dutch SAI noted, citing the World Bank's 2019 Progress Report, that two important causes were impeding successful reconstruction: firstly, the peculiar political situation in Sint Maarten, particularly in the last quarter of 2019, delayed the preparation of various reconstruction projects; secondly, there was limited local implementation capacity.

In its latest update in May 2021 concerning the year 2020, the *Algemene Rekenkamer* highlighted slow progress in the reconstruction of Sint Maarten. Out of 379 housing units to be restored, only 44 % have actually been. As for the 19 schools damaged, the work was completed for only three of them at the beginning of 2021.

It is estimated that the costs of repairing infrastructure and utilities will exceed the original forecast by almost EUR60 million. The remaining EUR101.1 million, which the Netherlands has set aside for the reconstruction of Sint Maarten, is unlikely to be sufficient to carry out all the projects.

The *Algemene Rekenkamer* therefore recommends to the Minister for the Interior and Relations with the Kingdom not to schedule new projects and to give precise instructions to the representative of the Netherlands in the Financial steering Group. Priority should be given to the completion of ongoing projects.



***Algemene Rekenkamer's publications on the reconstruction  
of Sint Maarten***

**1) Focus on the Dutch contribution to the reconstruction of Sint-Maarten**

*Focus op de Nederlandse bijdrage aan de Wederopbouw van Sint—Maarten Report* 13-12-2018

**2) Reconstruction of Sint-Maarten: one year after the disaster, few aid funds spent on Sint Maarten**

*Wederopbouw Sint-Maarten: Jaar na ramp: Nog weinig hulpgeld op Sint-Maarten besteed nieuwsbericht* 13-12-2018

**3) Reconstruction of Sint-Maarten: Giving priority to the restoration of houses and schools**

*Wederopbouw Sint-Maarten: Geef prioriteit aan het Herstel van huizen en scholen nieuwsbericht* 20-05-2020

**4) Reconstruction of Sint-Maarten: no new projects completed in advance**

*Wederopbouw Sint-Maarten: Geen nieuwe projecten, eerst afronden nieuwsbericht* 19-05-2021



## **Replies from the administrations and bodies concerned**



## Summary

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## Addressee with no observation

Mr. President of the Territorial Council of Saint-Barthélemy
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## **RESPONSE OF THE PRIME MINISTER**

*On the night of September 5-6, 2017, the hurricane IRMA hit the islands of Saint-Martin and Saint Barthélemy. Classified as a Category 5, IRMA is to date the most powerful cyclone ever seen in the Lesser Antilles. Facing this major disaster, the State mobilised nearly EUR500 million to support the two islands and their populations: EUR 163 million for emergency measures during the crisis and EUR 330 million to support the local economy, individuals and reconstruction of both communities.*

*The then Prime Minister established an interministerial committee to lead public action for the two islands and, on 14 September 2017, appointed an interministerial delegate for their reconstruction. Supported by a small team, the interministerial delegate's role was to design and coordinate, in close liaison with communities, the set of public policies necessary for the reconstruction and development of the two islands, as well as their resilience to natural hazards and climate change.*

*On the occasion of the interministerial committee of 21 November 2017, the interministerial delegate for reconstruction submitted to the Government his report on reconstruction. As a true road map for exemplary and sustainable reconstruction for the State, this report helped designing a partnership protocol between the State and the community of Saint-Martin.*

*It lists the reciprocal commitments of each party in terms of objectives and resources, and provides for the implementation of some twenty concrete actions, which are based on five main tracks:*

- *strengthen the means of the prefecture of Saint-Barthélemy and Saint-Martin to ensure effective legal control and a better presence of the State services on the spot;*
- *better manage the transition period by ensuring optimal security, supporting local businesses, including cash flow measures and ensuring that reconstruction targets them first;*
- *launch a responsible and controlled urban planning policy by establishing a precise diagnosis of the land, reviewing local urban planning documents, establishing a joint strategy to combat illegal construction and an urban planning police, or by strengthening local engineering capacities;*
- *initiate a reflection on the tourism model of the two islands in the long term;*

- *rebalance relationships between the French and Dutch parties in Saint-Martin by strengthening bilateral cooperation, for example through the launch of joint infrastructure projects and the relaunch of the so-called “Q4” forum dialogue, which brings together the French and Dutch governments, the Saint-Martin community and the Sint Maarten government.*

*To date, the reconstruction work in Saint Barthélemy has almost been completed. Those in St. Martin require additional delays.*

*The Court’s recommendations will enable the State services and the community of Saint-Martin to make some administrative procedures more operational, organise the skills upgrading and strengthen the monitoring of the reconstruction funding. However, some of the recommendations addressed to the State call for some comments.*

**• *Property in a state of manifest abandonment (Recommendation No. 2)***

*The Court found that after the passage of the hurricane IRMA in Saint-Barthélemy and Saint-Martin, the housing stock included a large number of degraded private property, whether abandoned or not. If the phenomenon is not new, the hurricane intensified it.*

*However, the procedure for property in a state of manifest abandonment provided for in articles L. 2243-1 to L. 2243-4 of the General Code of Local Authorities (CGCT), which allows in particular to compel an owner to act and to renovate his property and which gives in the event of inaction the capacity of the public authority to intervene, is not currently applicable to Saint-Barthélemy and Saint-Martin.*

*The Court therefore recommends an extension of this provision.*

*I am in favour of this recommendation and that is why a provision has been included in the bill on differentiation and decentralization to this end. It also includes various measures to simplify local public action, currently being considered in Parliament.*

• **Monitoring of the public funds mobilised for reconstruction (recommendation No. 3)**

*The report emphasises that the action of the State should be more clearly reflected in the budgetary documents, in order to give concrete expression to the overseas delegations of the National Assembly and the Senate of the review of reconstruction operations during the examination of the finance law. This point is reflected in recommendation No. 3 of the report: carry out a follow-up of public funds mobilised for the reconstruction of Saint Martin.*

*The Government will follow up on this recommendation in the framework of the 2022 Overseas Transversal Policy Document (DPT), which has just been initiated by the Ministry of Overseas.*

*The various DPT contributors were asked to provide the DPT with the amount of funds mobilised for the reconstruction of Saint-Martin, from the 2017 to the 2021 financial year. This information will be presented in a specific DPT annex.*

• **Establish effective collaboration between the DRFiP and the community of Saint-Martin (Recommendation No.7)**

*This effective cooperation which the Court calls for has, in fact, never ceased. The DRFiP of Guadeloupe has consistently implemented the powers granted by the law.*

*The latter provided for a division of tax jurisdiction between the local authority, which lays down the rules applicable within the framework of its financial autonomy, and the State, which is responsible for the operation of the base, control and collection of local taxes and duties, under the conditions laid down by an agreement concluded between the State and the community.*

*This convention, dating from 2008 and having expired in 2016, is now obsolete and therefore needs to be renewed in order to take account of the changes in taxation since then. The Director General of Public Finance accepted by a letter dated March 26, 2021 addressed to the president of the community the principle of the development of a new agreement for tax management.*

*Working meetings have already been held. They must enable the community to clarify its intentions regarding the tax reform it plans to implement and, for the DGFIP, to accurately measure its full impact on the taxation applicable to Saint Martin, as well as on the community's tax information system. The DGFIP will then be able to adapt the scope and content of its action.*



*In the field of IT, the information system deployed at national level for the management of more than 38 million tax households is not adapted, neither in terms of costs nor in terms of functionality, to taxation which has gradually diverged from national taxation within the framework of St. Martin's fiscal autonomy which is only applicable to a small number of tax households.*

*This is the reason why the tax information system of the community already consists mainly of specific applications. This does not detract from the fact that DGFIP support it for tax management, as it has been consistently assured.*

***• Limited mobilisation of the European Union Solidarity Fund and application of imperative urgency in post-IRMA public procurement***

*Finally, I return to two points raised by the Court concerning the limited mobilisation of the European Union Solidarity Fund and the application of the emergency situation for post-IRMA public procurement.*

*Under the European Union Solidarity Fund (EUSF), the European Commission allocated a total amount of EUR 48,906,025, of which EUR 46 million was allocated as a priority to the community of Saint-Martin by the Interministerial Committee for Reconstruction of 12 March 2018.*

*Credits consumption was to take place within 18 months of the European Commission's decision to pay (taken on 25 July 2018), i.e. before 25 January 2020.*

*As indicated in the Court's report, the community of Saint Martin has not been able, despite the deadlines granted, to produce invoices eligible for all the credits provided, which led to the redirecting of some credits for the reimbursement of expenditure incurred by several ministries linked to the crisis management.*

*One of the difficulties encountered by the community of Saint-Martin was an extensive application of the concept of emergency situation to purchase realised outside the normal framework of public order rules.*

*The community itself should have stopped the use of emergency procedures without any notification by the State being required as soon as October 9, 2017, the date on which it considered to be back to a normal functioning.*

*These rules were recalled by the Director General of Overseas to the Prefect of Guadeloupe, by two letters dated 10 September 2018 and 9 August 2019, both communicated to the community.*

*The notion of emergency situation, of case-law essence, does not always allow public officials to determine in a precise and certain way the*

*period during which they can act by derogating from common law rules. That is why I hope that the law will create an exceptional case for overseas natural disasters.*

*The draft law on combating climate change and strengthening resilience defines the cumulative conditions for the declaration of this state: a major natural hazard, a breach of the normal functioning of institutions and an imminent serious danger.*

*The declaration of this state adjourns administrative deadlines and allows for the implementation of derogatory procedures to ensure the permanence of the institutions. The bill provides for a five-year trial, limited to overseas territories.*

*This will result in a clear legal framework for overseas public officials facing natural exceptional circumstances.*

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**RESPONSE OF THE CHAIRMAN OF THE TERRITORIAL  
COUNCIL OF  
SAINT-MARTIN**

***1- General comments***

*The Overseas Community (COM) of Saint-Martin takes note of the report sent by the Court. It shares most of the findings contained in the document, and agrees with the recommendation. Most of these recommendations are already being implemented in the context of the reorganisation of the COM and the greater deployment, both qualitatively and quantitatively, of its services.*

*At this stage, and as part of the required response format, the report informs the COM: (i) two reasons for satisfaction, (ii) two regrets, and (iii) an expectation.*

*(i) The two main reasons for satisfaction are:*

— *The Court acknowledges that the interests of the COM have been adversely affected, in particular as regards the duration of the emergency situation, fixed unilaterally and retroactively by the Prefect of Guadeloupe to a little more than a month (9 October 2017). The community of Saint-Barthélemy was six times less impacted by the cyclone (the share of buildings destroyed or severely damaged amounted to 5 % of the building stock in Saint-Barthélemy whereas it amounted to 31% in Saint-Martin, according to COPENICUS). However, the community of Saint-Barthélemy benefited of this more flexible special regime for public procurements two months longer (end of November 2017).*

— *The present report recognises a perfectable involvement of the State and its decentralised services, particularly in the field of taxation. Recalling the relevant conclusions of its note of 22 December 2017 (“If it is necessary to update the Management Convention of 2008, in order to take account of the role now played by the community in the field of tax information systems, it is nevertheless for the tax administration to provide human and technical assistance required for the implementation of its taxes, with a partial payment of their development costs. Otherwise, the provisions of the above mentioned organic law would be meaningless and the application of the Community’s fiscal autonomy eroded”), the Court calls for a decent cooperation of the DRFiP of Guadeloupe. Without it, the implementation of the fiscal reform decided in 2018 by the COM would rapidly get obsolete and ineffective, thus relegating the inhabitants of Saint-Martin to “second-class citizens” taxpayers...*

*(ii) The two main regrets are as follows:*

— *The COM would have liked to have had, even briefly, a calculation, to date, of public credits intended for the reconstruction of Saint Martin and actually consumed.*

— *The report could have placed greater emphasis on the Government’s failure to comply with the commitments made in November 2017 regarding the review of the compensation for the burdens badly (2008) or non (2012) balanced. The COM would have liked the reopening and follow-up of this dossier to constitute a recommendation of the Court, thus allowing, from a consensual and constructive perspective, to “eventually close the institutional transition of 2008”.*

(iii) Finally, the COM formulates an expectation for the future:

— *The publication of a thematic report on the State's action and interventions in Saint-Martin would make sense by 2023-2024 – that is, at the end of the Recovery Plan currently being implemented. Such a report had, of course, been planned and partially drafted in 2015-2016 but it was finally replaced in December 2017 ("While it is necessary to update the 2008 Management Convention to take account of the role now played by the community in the field of tax information systems, it is nevertheless up to the tax administration to provide the human and technical assistance necessary for the implementation of its taxes, with partial payment of their development costs. Otherwise, the provisions of the above mentioned organic law would be meaningless and the application of the Community's fiscal autonomy eroded") by the 7-pages note mentioned above. The drafting of such a report, dedicated to assessing the effectiveness of recommendations n°2, 3, 7 and 8, would allow, a little more than fifteen years after the community's accession to the status of Overseas Communities governed by Article 74 of the Constitution, to verify whether the commitments made by the Head of State in September 2017 and September 2018 with regard to the inhabitants of Saint-Martin were fulfilled.*

## **2- Detailed comments**

— *The first visit of the President of the Republic to Saint Martin took place on 10-11 September 2017 (not 28 October).*

— *As of December 31, 2015, the community had a proportion of managers (category A) below the national average of 25 % (6.7 % against 9.3 %). The COM would like to clarify that, as a result of a proactive action that takes into account the conclusions and requirements of the Territorial Court of Accounts report of July 2018 (on management 2007-2016), this proportion has experienced an upward trend. It was already 7.2 % at the end of 2018 and is expected to exceed 8 % by the end of 2021.*

— *The COM wishes to insist, in contrast to the situation in Sint Maarten (ten governments in ten years), on the stability of the institutions of the French part of Saint Martin, with an average executive every 3.5 years (March 2012-March 2022). This political stability, which was confirmed after 2017, is a decisive asset for both consolidating post-IRMA reconstruction in the coming years and succeeding in post-Covid recovery.*

— “By spring 2019, more than half of the Dutch contribution had already been paid”. *The COM would also like to know the proportion of public funds announced in March 2018 (EUR494.8 million) actually paid to the territory of Saint-Martin by spring 2019.*

— *With regard to the exceptional allocation, the COM would like to duly remind that the State/COM Protocol of 6 November 2017 provided for annual payments of EUR50 million over three financial years: 2018, 2019 and 2020.*

— “These payments (EUR53.2 million) between 2017 and 2019 allowed the community to always have the cash flow needed to meet its expenses, without compromising its operating financial balances”. *This statement is correct. However, no payments were made for the 2020 financial year. However, in view of the health crisis, which was added in this case to the post-IRMA difficulties, the community suffered a loss of revenue of EUR14.9 million which, unlike the other communities of the Republic, has not been the subject of any compensation from the State (the COM wishes, in this regard, to emphasise the inadequacy and ineffectiveness of the provisions of Art. 24 of the LFR of 30 July 2020. The amending Finance Act specifies that the amount of the allocation paid is equal to the difference, if positive, between the average amount of revenue received between 2017 and 2019 and the amount of the same revenue received in 2020. However, the reference period was at considerable disadvantage in Saint-Martin, as revenue received in 2017 and 2018 had been particularly affected by the consequences of cyclone IRMA. Paradoxically, this tax income (consumption tax on petroleum products (TCPP)) are therefore expected to be lower in 2020 (EUR11.6 million) than in 2019 (EUR12.7 million) while remaining below the average revenue in 2017-2018-2019 (EUR11 million). In this case, the COM would ultimately receive nothing under the planned allocation: it should even, in a few weeks’ time, pay the down payment of EUR 0.3 million back (0.3 % of the tax revenues of the year: EUR94 million) collected at the beginning of December 2020).*

— “... the State services considered that the urgent need could not be invoked by the community beyond 9 October 2017, the estimated date of “back to normal life in the territory “. *The COM would like to recall that the “back to normal life” did not really take place until mid-December 2017, with access to drinking water for all inhabitants, and the departure of the remaining Civil Security staff (17 December). Furthermore, the Government’s press release of 17 September 2018 explicitly mentions that “the reconstruction process was actually able to begin in mid-November [2017] in Saint-Barthélemy and early March [2018] in Saint-Martin”: The end of the emergency situation period therefore corresponded to the reality*

*of the situation in Saint-Barthélemy (end of November 2017), but not in Saint Martin.*

— “A third phase, launched in 2020, extended the expertise on public order management and engineering”. *The COM wishes to clarify and deplore, that this third phase has not yet entered into force, having been blocked, in extremis, by the Director of Cabinet of the Overseas Territories Minister.*

— “Regarding judicial means, a local court was set up in Marigot in May 2019”. *The COM would like to know, in the context of this report, the increase in the staffing of the Department of Justice (FTE) as a result of this timely structural reform.*

— “(...) and contributes to the non-use of social benefits in Saint-Martin”. *The COM would like to emphasise in particular the extent of these non-uses, in particular with regard to the “old age minimum pension” (ASPA) and the Activity Allowance.*

— “In 2018, Saint-Martin was one of the poorest communities in France in terms of GDP/inhabitant, after Mayotte (EUR8,552), Wallis-et-Futuna (EUR10,100 in 2005), almost ex aequo with Guyana (EUR15,765)”. *These data date back to 2014 (the GDP of Saint Martin was calculated in 2018 under the CEROM scheme). The COM points out that, since then, and in view of the succession of crises affecting the Territory, the level of GDP/inhabitant has not changed significantly, despite the decline in the population in recent years (i.e. – 1,042 inhabitants between 2014 [35,107 inhabitants] and 2018 [34,065 inhabitants]).*

— “The French Insurance Federation estimated the amount of damage to be EUR1.13 billion for 17,110 claims. By the end of June 2019, EUR926 million had been paid”. *At that time, almost EUR200 million remained to be paid (a third of the Territory’s estimated GDP). In the context of the final report, the COM would like to have updated data from the FFA at the end of September 2020 and at the end of March 2021.*

*With regard to the FUL (Housing Emergency Fund, or EUR6 million awarded on a request from the COM (February 2018) of EUR12.9 million), the COM would like to point out that, with regard to SEMSAMAR, payments made at the end of January 2020 represent only 6.8 % of the estimated EUR50 million of work.*

— “This cumulative amount was up to EUR33 million on 31 December 2020”. *The COM would like to point out that at national level, this amount would be about EUR130 billion not injected into the economy.*



— *The COM would like to emphasise its low debt situation (the ratio [debt stock/RRF] went down from 40 % in 2015 to 31 % in 2017 and then to 26 % in 2019. That same year, the COM's debt reduction capacity was 2.6 years; equivalent to half of the level recorded for the average of French local authorities (5 years). A fortiori, it can only deplore that the State has never followed its own proposal of March 2018, namely to propose a "Great Borrow" of EUR60 million at zero rates (interest rates being destined to be borne by the State).*

— *"There was also no working group meeting to review the modalities for assessing burdens transferred to the benefit of the community". The COM wishes to provide the following details on this important subject. Indeed, the burdens relating to competences transferred in 2012 have never been assessed.*

*This unprecedented situation, which was highly detrimental to the community of Saint-Martin, had been recalled, highlighted and denounced by the Territorial Chamber of Accounts in its interim report (17 January 2017) on the management of the COM between 2007 and 2016. Point 2.1.7 of that report led to a recommendation that was entirely relevant, a fortiori in the post-IRMA context (Recommendation No. 2: To assess, even a posteriori, the amount of the expenditure relating to powers transferred in 2012. It was duly pointed out that, with regard to the second wave of transfer of powers (1 April 2012) relating to the areas of urban planning, construction, housing, and energy, the procedure laid down in the CGCT had not been complied with, as no decree (comparable to that of April 2011, that had also underestimated the costs transferred according to the CTC) which had not fixed the amount of the charges and the right to compensation transferred to Saint Martin. The CTC therefore recommended the following measure: "In the absence of an priori compensation calculation, a more reliable calculation is possible a posteriori; It should be established by the community in case a reopening of a dialogue with the State becomes possible". While the reopening of such discussions with the State had just been initiated by the signing, respectively by the Prime Minister and the Minister of Overseas Territories, of the two protocols in November 2017, the sudden disappearance, in the body of the final report (13 April 2018), of this point 2.1.7 and, above all, of the corresponding recommendation, made the position of the COM in its negotiations with the State in 2018 particularly complicated. The community was expecting a lot from the publication of this report, which was supposed to trigger the establishment of the ad hoc working group. The report intended, in accordance with the provisions of the State/COM Protocols of 6 November 2017 (see point II, paragraph 7: An ad hoc working group, including the community, will be set up as soon as the final reports of the Territorial Chamber of Accounts and the Court of Accounts are published. This working group will examine all the recommendations made by the magistrates, including the review of compensation not received or underestimated in connection with the*

*transfer of powers established between 2007 and 2012, as a result of the change in the status of the community of Saint-Martin ") and 21 November 2017 (see paragraphs 1 to 3 of point 4: In conjunction with the Interdepartmental Delegation for the Reconstruction of Saint-Martin, the community will propose, by March 31, 2018, a multi-year investment and catch-up plan, covering the period 2018-2023, and prioritising projects according to the needs of Saint Martin's populations and economy. This Plan will take into account the provisions of Article L.O 6345-3 of the CGCT to establish a catch-up plan for the renovation and construction of structural equipment to enable economic and tourism development and to assess the respective financial commitments of the State and the community. Following the conclusions of the Working Group referred to in paragraph 2 of Protocol No. 1, it could, with an amendment to the Development Agreement 2017-2020, remedy all or part of the deficiencies found in the area of financial compensation for the transferred expenses"), to study the review of underestimated compensation (2007) or non-collection (2012) in connection with established transfers of powers. This situation, which is still pending, can only contradict or even thwart the objective of catching up, although duly recognised, in 2017, by the State at the highest level.*

— *As regards statistical production, the COM points out that, despite regular and reassuring assertions by INSEE over the past three years, it is still in a "dead corner" of national public statistics. The absence of a price index, for example, was detrimental after IRMA, preventing the COM from assessing inflationary and anti-competitive excesses. Finally, the creation of a statistical unit (the Statistical Institute of French Polynesia (ISPF) cannot be an example to follow in full, if only by the size of the budgetary and human resources required, corresponding to the realities of a COM eight times more populated and nine times richer (in terms of GDP) than Saint-Martin) can only be conceived as a complement to a real commitment of the INSEE.*

*In conclusion, the COM endorses the eight recommendations made, of which  $\frac{3}{4}$  are entirely or partly within its responsibility. Recommendation No. 2 ("Strengthening and adapting legislation on property in a state of manifest abandonment provided for in articles L. 243-1 to L. 2243-4 of the CGCT in Saint-Martin") requires a thorough and benevolent review, particularly in the context of the so-called "4 D" bill. Finally, the COM expects a great deal from Recommendation No. 3 ("Monitoring public funds mobilised for the reconstruction of Saint Martin"), which could, moreover, be part of an improvement of the transversal policy documents annexed to the PLFs: The latter, in fact, only partially reflect the State's annual budgetary effort towards Saint-Martin.*

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**RESPONSE OF THE DIRECTOR-GENERAL OF THE FRENCH  
DEVELOPMENT AGENCY (AFD)**

*Your well-documented report accurately traces the role of all the key players involved in the reconstruction of these overseas territories of the Republic. As you may have noticed, the French Development Agency (AFD) was able to mobilise quickly, at the request and alongside the State, to work towards this reconstruction and it shares in every respect the findings made by the Court.*

*It also seems important to me that we should be able to mobilise resources from the Overseas Territories Ministry in order to take stock of this exceptional arrangement, both in the volume of financial resources mobilised and the innovative technical assistance scheme put in place by the AFD, in order to draw operational lessons. The latter could also inform the implementation of other government-designed schemes, in particular the Overseas Communities Recovery Contracts (Corom), which are currently being deployed.*

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