

Policy Compass Form for **Internet Consultation**

Title:

(Please enter the publication title of the internet consultation here)

Amendment to the Financial Markets Regulation BES 2012 to increase branch limits for credit institutions and insurers and to exempt large exposures

Who are the stakeholders and why?

[Explanation](#)

Help questions

- Who are the stakeholders, directly or indirectly, in the issue in question?

The inhabitants of the public bodies Bonaire, St. Eustatius and Saba (further: BES) as purchasers of banking and insurance services offered through branches. Credit institutions and insurers that have their registered office in Curaçao or Sint Maarten and that provide their services through a branch in the BES. De Nederlandsche Bank (DNB) as licensing supervisory authority for branches in the BES. The Central Bank of Curaçao and Sint Maarten (CBCS) as supervisor of credit institutions and insurers that are based in Curaçao or Sint Maarten and that offer their services through a branch in the BES. The Ministry of Finance as policy responsible for the functioning of the banking and insurance sector in the BES.

- Who has relevant knowledge and experience of the issue?

All of the above

- How have stakeholders been involved so far in the different stages of the policy path?

The inhabitants of the BES, the banking and insurance sector in the BES and the supervisors are involved in the internet consultation of the proposed amendment to the Financial Markets Regulation BES 2012. DNB is also involved in the drafting of the proposed amendment.

1. What's the problem?

Help questions

a) What's the problem?

The regime governing access for branches of credit institutions and insurers in the BES needs to be reviewed. Under the BES Financial Markets Act (Wet financiële markten BES) introduced in 2012 and the regulations based thereon (for the sake of brevity, Wfm BES), credit institutions and insurers with their registered office in Curaçao or Sint Maarten are permitted to operate in the BES through branches, provided that those branches are only small in size.

These branches are subject to a branch limits. Above this limit, conversion to a BES-based company with an independent bank/insurer licence from DNB is required. The branch limit for credit institutions on the BES is linked to the sum of current accounts, savings and deposits held at the branch and currently amounts to USD 90 million. The branch boundary for insurers is linked to gross premium income received through the branch for the last closed financial year and currently amounts to USD 5 million.

However, it has now become apparent that it is precisely these low branch limits that inadvertently threaten to have a market-distorting effect, because the branch limits are significantly lower than the limits above which it becomes economically viable to convert a branch into an independent legal entity with its registered office in the BES. As a result, credit institutions and insurers will choose to close their branches in the BES rather than transform them into subsidiaries with their registered office in the BES if there is a risk that the branch limits will be crossed. This has an impact on market and competitive conditions on the ground and thus on the functioning of the financial sector as a whole. The micro-prudential advantage of applying low branch limits no longer outweighs its risks to the financial sector in the BES.

b) What are the causes of the problem?

In the situation prior to the political reforms, a licence from the Bank of the Netherlands Antilles (the then supervisor) was sufficient for a credit institution or insurer to be able to operate in the entire area of the Netherlands Antilles.

Following the reforms, a situation has arisen in which two licenses are required for credit institutions and insurers based in Curaçao and Sint Maarten that are active in the BES through a branch office. The principal place of business requires a full licence issued by the CBCS on the basis of the legislation of Curaçao and Sint Maarten. The branch also requires a branch licence issued by DNB on the basis of BES legislation. For the branches, the BES legislation provides for a simplified regime because they are not independent legal entities, but part of the main company in Curaçao or Sint Maarten. Prudential supervision of a branch is therefore not possible. A branch does not have legal personality and does not hold its own financial guarantees (such as liquidity and solvency buffers). Prudential supervision is therefore primarily invested in the country where the head office is located (Curaçao or Sint Maarten). Under BES legislation, branches are presumed to comply with prudential requirements as long as the main entity is authorised.

This regime did maximum justice to the existing market conditions within the small local market and the strong interconnectedness of the financial markets in the former Netherlands Antilles. This also prevented double supervision and unnecessary (accession) barriers. For the sake of prudence, it has been decided to allow credit institutions and insurers with their registered office in Curaçao or Sint Maarten to operate in the BES through branches, provided that those branches are only of a small size. The idea was that allowing only small branches would limit the prudential risks in the BES. In addition, it was further considered when establishing the low branch limits that small branches could not reasonably be expected to be able to meet prudential requirements on their own.

Various discussions with the financial sector on the ground and with DNB in recent years have shown that, in view of the small local market in the BES and the existing market conditions, the branch limits laid down in the Wfm BES in 2012 are (now) so low that they risk becoming market-distorting because the branch limits are significantly lower than the limits above which it becomes economically viable to convert a branch into an independent legal entity with its registered office in the BES. For a large number of branches in the BES, the point has been reached that low branch limits are or are beginning to become constrictive. The maintenance of the current low branch limits makes a choice for a number of these credit institutions and insurers between 'subsidiaries' (the transformation of the branch into an independent legal entity with its registered office in the BES) or the termination of the branch's activities inevitable. It is expected that they will choose to close their branches in the BES rather than transform them into subsidiaries domiciled in the BES.

c) What is the extent of the problem?

By far the largest part of the offer of services by credit institutions and insurers active in the BES takes place from a branch whose main company is based in Curaçao or Sint Maarten and not from a company based in the BES. Also before the state reforms in 2010, the head office of credit institutions and insurers was usually located in Curaçao or Sint Maarten and they had independent branches in the BES. This market picture has not changed in recent years. The local market in the BES was then and is still very small (Bonaire now has around 24,000 inhabitants, St Eustatius around 3300 and Saba around 2000).

In the BES, three branches of credit institutions are active in Curaçao and six branches of insurers are active in Curaçao and two branches of insurers are active in Sint Maarten. For some of these branches, the point has been reached that the branch limit is or is beginning to become constrictive. Crossing the branch limit would require, under the current legal framework, the establishment of a seat in the BES and the application for a full licence, while the provision of services through these branches is completely insufficient to be able to comply independently with the entire legal framework and to be able to bear the costs associated with it.

The microprudential importance of applying low branch limits no longer outweighs the risks to access to financial services in the BES, as several branches are approaching or already crossing the branch limits. Indeed, the presence of branches is often the only possibility for residents of the BES to purchase banking or insurance services, because the level of digital services and connectivity in the BES is low.

d) What is the current policy and what has been the outcome of the evaluation?

Under the current legal framework in the BES, credit institutions and insurers with their registered office in Curaçao or Sint Maarten are permitted to operate in the BES through branches, provided that those branches are only small in size. The branch limit for credit institutions is linked to the sum of current accounts, savings and deposits of up to USD 90 million held at the branch. The branch limit for insurers is linked to gross premiums received by the branch for the last closed financial year of up to USD 5 million. If the branch limit is crossed, a full licence with a registered office in the BES is required.

Several discussions with the sector and DNB have shown that the branch limits set in 2012 are significantly lower than the limits above which it becomes economically viable to convert a branch into an independent legal entity with its registered office in the BES. The limits have never been raised since 2012 (not adjusted for inflation and economic growth) and given the small local market in the BES and the existing market conditions, they are now at a level that distorts the market.

Crossing the branch limits requires conversion to a fully licensed BES-based company, while only companies of a certain size (well above the current branch limits) are able to independently comply with the entire legal framework and bear the costs thereof and to operate a profitable business model. These include, for example, costs to comply with governance requirements, independent risk management and prudential requirements. Maintaining the current limits could therefore lead to a reduction in the provision of services in the BES if credit institutions and insurers reconsider their presence in the BES when crossing the branch limit because of the costs that this entails that are disproportionate to the scale of the on-site activities at the current branch limits. The current low branch limits mean that the number of credit institutions and insurers operating in the BES through a branch has come under increasing pressure. This has undesirable consequences for market and competitive conditions on the ground, which in turn affects the functioning of the financial sector in the BES as a whole. The functioning of the financial sector depends on a sufficient number of individual financial service providers who together ensure a good and sufficient supply of financial services and a well-functioning payment system on the ground. Against this background, the microprudential advantage of applying low branch limits no longer outweighs its risks to the financial sector as a whole in the BES.

e) What happens if the government does nothing (zero option)? What justifies government intervention?

If the branch limits are not adjusted, most branches operating in the BES in the current situation (in the event of an increase in activity) would require a full authorisation in the near future. Providers of banking and insurance services through a branch in the BES have indicated in interviews that they would reconsider their presence in the BES if they could only operate with a registered office and a full authorisation if they crossed the current branch limit. This is because they are too small to be able to independently comply with the entire legal framework and bear the costs thereof. It is only to a certain extent that a profitable business model can be implemented that can bear the costs of a full licence. This means a vulnerable situation for the quality and cost level of service in the BES and possible increase in market concentration, which justifies public intervention.

2. What is the intended purpose?

[Explanation](#)

Help questions

- a) What are the policy objectives?

A well-functioning banking and insurance sector in the BES and the maintenance of a sufficient number of individual financial service providers that together ensure a good and sufficient supply of financial services and a well-functioning payment system on the ground. Taking into account the specific local circumstances and the strong interconnectedness of the credit institutions and insurers active in the BES with the financial sector in Curaçao and Sint Maarten and based on effective, adequate, risk-based and coordinated supervision of the banking and insurance sector in the BES.

- b) To which [sustainable development goals \(SDGs\) and broad welfare outcomes do the goals contribute?](#)

Tackling inequality, non-discrimination and equal opportunities, sustainable inclusive economic growth, sustainable infrastructure, knowledge and innovation.

3. What are the options to achieve the goal?

[Explanation](#)

Help questions

- a) What are promising targets to achieve the goal?

Zero option or regulation

- b) Given the starting points, what are promising policy options?

Zero option is discarded in view of the current problem (see under 1e)
Adjusting regulations: adjust the authorisation requirements in order to make the transformation into a stand-alone entity with full authorisation more profitable or increase branch limits.

- c) What is the [policy theory \(target tree\)](#) per promising policy option?

Strategic objective

A well-functioning banking and insurance sector in the BES that takes into account the specific local circumstances and the strong interconnectedness of the credit institutions and insurers active in the BES with the financial sector in Curaçao and Sint Maarten.

Operational objectives

Maintaining a sufficient number of individual financial service providers who together ensure a good, safe and sufficiently large range of financial services and a well-functioning payment system on site in the BES.

Results

Effective, adequate, risk-based and coordinated supervision of the banking and insurance sectors in the BES.

Activities (adjust regulations)

Reduce licensing requirements or adjust branch limits.

4. What are the consequences of the options?

[Explanation](#)

Help questions

- a) What are the expected impacts per policy option?

See for zero option under 1e.

Reducing the obligations that the legal framework entails in the case of a full licence would make the transformation into an independent entity with a full licence more profitable. However, it has been found that such relief is not feasible without calling into question the principle that an independent company can operate sufficiently independently and independently.

Overall, it is preferable to increase the branch limits for credit institutions and insurers operating in the BES through a branch to the point where there is a viable business model that can bear the cost of full authorisation. Adapting the branch limits will make the regulatory framework more future-proof as existing branches in the BES can continue to operate as such below a certain size and thereby reduce the likelihood that the supply of these services in the BES will be reduced, while the tipping point towards full authorisation is set at a size where a profitable business model can be used that can bear the costs of full authorisation.

- b) Which [mandatory tests](#) are applicable and what are the results (if known)?

Regulatory impact assessment and implementation and enforcement test by supervisor are performed during internet consultation.

5. What is the preferred option?

[Explanation](#)

Help questions

a) What is the proposal?

In order to remedy the market distorting effect of the too low branch limits for credit institutions and insurers operating in the BES through a branch, those branch limits are increased in the Financial Markets Regulation BES 2012.

The branch limit for credit institutions is now set in the Financial Markets Regulation BES 2012 at a maximum of USD 90 million and consists of the sum of current accounts, savings and deposits held at the branch. The branch limit for insurers is set at a maximum of USD 5 million and consists of gross premiums received by the branch for the last financial year closed.

A branch limit is chosen at a level at which it can be expected that the costs of converting a branch into a fully licensed BES company can be borne in a profitable manner given the size of the activities that run through the branch. For credit institutions, this point is set at USD 600 million in current accounts, savings and deposits, and for insurers at USD 35 million in gross premiums received for the last financial year closed. The other requirements that are imposed on branches remain the same, such as the condition that branches are not allowed to carry out offshore activities and that a bank or insurer that wants to operate in the BES via a branch must be located in Curaçao or Sint Maarten.

From a prudential point of view, it is at the same time desirable for DNB to be able to monitor credit institutions and insurers that have branches more directly in the BES. An improvement in DNB's information position means that DNB can supervise more effectively. An obligation is therefore foreseen for these credit institutions and insurers to also submit the reporting statements (with the solvency and liquidity position) that they periodically submit to the CBCS to DNB, so that this does not create any additional burden. All branches existing in the current situation may continue to operate as branches after the increase of the branch limits.

In addition, the opportunity was taken to transfer the 'large items scheme', which had hitherto been included as a further requirement in a supervisory regulation (the AFM Regulation and DNB's further requirements under the Wfm BES and the Wvft BES 2012), to the BES Financial Markets Regulation and to design it as an exemption. A 'large exposure' or 'large exposure' exists where a credit institution has a large exposure to one counterparty. In order to mitigate concentration risks, holding such large exposures with a single counterparty exposure is subject to conditions.

b) How does the proposal take into account:

- [effectiveness and efficiency](#);
- practicability for all relevant parties (including [capacity to act](#), [regulatory burden and enforcement](#));

- A broad social impact?

Increasing the branch limits for credit institutions and insurers operating in the BES through a branch takes into account effectiveness as the proposal addresses the market-distorting effect of the too low branch limits. It is effective because it is aimed at a tipping point that is at a level at which it can be expected that the costs of conversion to a BES-based company can be borne profitably. This will prevent the companies concerned from reconsidering their presence in the BES, which could lead to a reduction in supply, which would have a broad social impact. Increasing the branch limits can contribute to an effective and efficient structure of supervision because it allows the traditionally existing market relations to be maintained, thus aligning the supervisory regimes of Curaçao and Sint Maarten on the one hand and the public bodies on the other hand as much as possible because of the interconnectedness of the financial markets and the preservation of a level playing field. The proposal is practicable for credit institutions and insurers operating through a branch in the BES because it ensures that a full authorisation only comes into view if the size of the branch is large enough to bear the effort and costs of conversion to a fully licensed seated company profitably.

From a prudential point of view, it is desirable that DNB (the supervisor of the branches in the BES) can monitor credit institutions and insurers with their registered offices in Curaçao and Sint Maarten that have branches in the BES more directly. An obligation is therefore laid down for these credit institutions and insurers to also submit the reporting statements that they periodically submit to their own supervisor (CBCS) to DNB (so that this does not create any additional burden).

- c) What are the risks and uncertainties of this proposal?

The increase in the branch limits means that larger branches of credit institutions and insurers based in Curaçao and Sint Maarten are also allowed. As a result of the increase in branch limits, if the activities of a branch in the BES grow, a full licence under the BES legislation with a transformation into a BES-based company and prudential supervision by DNB is less likely to be visible. Because the prudential supervision of branch assets in De BES is primarily invested in the country where the head office of the company is located (Curaçao or Sint Maarten), prudential supervision will also primarily lie with the CBCS for larger branches after the increase of the branch limits. For the prudential supervision of the branches in the BES, DNB assumes, on the basis of the BES legislation, that the prudential requirements under the legislation of Curaçao and Sint Maarten are met as long as the head company has the required licence there and therefore complies with the applicable supervisory rules. DNB will therefore rely to a large extent on the supervision of the CBCS for the prudential supervision of branches.

From a prudential point of view, an obligation is provided for credit institutions and insurers that have branches in the BES to also submit the reporting statements that they periodically submit to their own supervisor (CBCS) to DNB so that DNB can monitor (the solvency and liquidity position of) these credit institutions and insurers more directly. An improvement in DNB's information position means that DNB can supervise more effectively.

In this context, it is also relevant to mention that cooperation between DNB and the CBCS has intensified considerably in recent years. In December 2020, a cooperation intention was also signed by the presidents of DNB and the CBCS. This is in line with the existing MoU, to which the Central Bank of Aruba and the Netherlands Authority for the Financial Markets are also parties. This gave impetus to the mutual exchange and cooperation on supervisory files. Furthermore, the Board of Kingdom Supervisors had a restart, which has a positive impact on the development of cooperation between the Kingdom Supervisors.

- d) What does the planned [monitoring and evaluation](#) look like?

The evaluation and monitoring of the project will take place during the annual meetings between representatives of the Ministry of Finance, the sector, DNB and the CBCS.