

## EXPLANATORY MEMORANDUM

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### I. GENERAL SECTION

#### § 1. Goal and motivation

##### 1.1 Goal

The purpose of this act is regulation of the electricity and drinking water supply in Bonaire, Sint Eustatius and Saba (hereinafter referred to as: the Caribbean Netherlands) in order to obtain a reliable, affordable, sustainable and high-quality service. Good supply is of high importance for public health, welfare and prosperity of society. It is a vital public service which is subject to specific government concern. Drinking water and electricity are essential basic needs. Loss of supply can cause social disruption. The most important objective of this Act is to guarantee the affordable supply of electricity and drinking water to consumers.

The goals of a reliable, affordable, sustainable and high-quality service do not deviate from those in the European Netherlands. This does, however, not entail that the European Netherlands legal frameworks are directly applicable to the Caribbean Netherlands. The islands have a relative disadvantage, due to a restricted extent of the domestic market. The insular character, the small surfaces, the small population size, and the sloping landscape influence how companies and markets are able to function. The smaller a market, the more difficult it is for companies to operate beside one another in a competitive and efficient manner. It will therefore not be possible, in the Caribbean Netherlands, to establish an electricity market based on the European Netherlands model, where, based on a regulated grid, various suppliers compete.

The aforementioned implies that the differentiated functions in the drinking water and electricity supply - production and distribution – will, in most cases, remain monopolised functions. The absence of competition as a driving force for promotion of the level of performance in the drinking water and electricity supply, makes it necessary to push performance in another way.

On account of the importance of the quality of good drinking water, a driving force behind performance, such as complying with quality standards, is necessary. This requires effective economic and technical regulation and supervision. In order to guarantee that the execution and supervision of this regulation take place based on sufficient expertise and predictable, business considerations, this act assigns the supervision of companies to two supervisory bodies: the Authority for Consumers and Markets (*Autoriteit Consument en Markt, ACM*) for economic supervision, and the Human Environment and Transport Inspectorate (*Inspectie Leefomgeving en Transport, ILT*) for technical supervision.

##### 1.2 Motivation

The BES Drinking Water Act and the BES Electricity Concessions Act have been effective in the Caribbean Netherlands since 10-10-10. These acts continued the existing Netherlands Antillean legislation in the area of drinking water and electricity supply, on the understanding that they were technically adapted to the constitutional position of the islands within the Netherlands. The contents of the Netherlands Antillean legislation applicable at that time were maintained to the maximum extent possible.

The framework of the BES Drinking Water Act is directed at the quality of the drinking water and provides the Executive Council and the Minister of Infrastructure and the Environment the authority to appoint supervisory civil servants for the drinking water quality. The Minister has assigned a responsive and advising role to the Human Environment and Transport Inspectorate (ILT) in this regard. The Executive Council grants a concession or permit for the production of drinking water and may link conditions to it in the interest of public health. Furthermore, rules are also imposed

by governmental decree, with regard to the drinking water quality and the producer's business management. The Minister also establishes a policy plan, once every five years, on drinking water.

The BES Electricity Concessions Act assigns powers to the Executive Councils of the islands, to impose requirements on the construction, lay out or utilisation of structures for the production of electricity with the goal of supplying electricity. The Act assigns the authority to the Executive Council to grant concessions to energy companies, and to impose requirements on these companies through these concessions. The Executive Council also establishes the consumer tariff.

Said acts do not provide the responsible Ministers direct authority with regard to the energy and drinking water supply, but they are responsible for reliable and affordable supply. In the current structure, the responsibility can only be realised to a certain extent. The reverse also applies: island governing bodies have indicated that the issues concerning drinking water and energy supply cannot be resolved within the current frameworks by the islands alone, and that the existing regulatory framework has the necessary limitations.

Against this backdrop, the former Minister of Economic Affairs indicated, on 30 January 2012, in the Second Chamber, how he viewed his responsibility in relation to that of the island governing bodies, and he committed to it that the contours of a regulatory framework for energy supply in the Caribbean Netherlands would still be sketched in 2012. This occurred by way of a letter on 17 December 2012 (Chamber documents II 2012/13, 31 568 no 125). A report was forwarded along with this, as an appendix, containing the results of a study of the possibilities of a regulatory framework for the supply of electricity.

It was evident from this study that the supply on all islands, when tested to the most important goals of the energy and drinking water policy, reliable supply, affordability and sustainability, left much to be desired. Especially on account of the scale disadvantages of the islands, it is not expected that companies can operate in a profitable manner, in the short-term, without support from the Minister of Infrastructure and the Environment, and the Minister of Economic Affairs. The necessary improvement in these areas will lead to tariff increases. The tariffs will therefore increase to a level which would not be socially bearable. Support from the Ministers is required in order to achieve an acceptable social level. The present proposal for legislation intends to establish a new regulatory framework for all of these aspects.

## § 2. Current setup for energy and drinking water supply in the Caribbean Netherlands

For the production of drinking water, the Caribbean Netherlands is largely left to sea water which is desalinated, using electricity. This is a costly method. The price for drinking water in the Caribbean Netherlands is therefore many times higher than that in the European Netherlands. On Saba and Sint Eustatius, rainwater is also collected in enclosed reservoirs beneath homes (cisterns), to serve as a source for drinking water. In most cases, the quality does not comply with the drinking water quality requirements. During dry periods, drinking water is produced from sea water in the desalination plant of the Gemeenschappelijk Energiebedrijf Bovenwindse Eilanden (GEBE) on Sint Eustatius. From mid-2013, a drinking water network is operational in Sint Eustatius, which is supplied with water from the desalination plant. The cisterns that are beneath homes also remain in use in Sint Eustatius, in addition to the drinking water network, and these tanks are also filled by way of tank lorries, in addition to rainwater. In Saba there are two private desalination plants that produce drinking water from sea water, with distribution using tank lorries. The Water en Energiebedrijf Bonaire (WEB) produces, distributes and supplies water in Bonaire. WEB operates a drinking water network to which nearly all households are connected. Those households that are not connected to the drinking water network are supplied with tank lorries. Existing regulation of the drinking water supply is specifically aimed at the drinking water quality, and to a lesser extent on governance concerning the drinking water supply.

The electricity market in Bonaire is characterised by a monopolistic market structure to which a limited amount of regulation applies (BES Electricity Concessions Act). Contour Global Bonaire (formerly Ecopower) produces electricity using oil generators and wind turbines. WEB purchases the electricity and supplies it to consumers through the grid operated by it. Regulation of market

results lacks. The Executive Council establishes a consumption tariff which is charged by WEB. A fixed fuel clause is included in the tariff. This is volatile, because it fluctuates along with the world market prices. The tariffs on Bonaire do, however, not reflect the underlying costs in the energy chain. Since tariffs to cover actual costs were not charged for many years, WEB has landed in financial difficulties. Despite a substantial increase in the fuel costs during the past years, the electricity price and the drinking water price, which is dependent on it, were not increased in Bonaire. On the one hand, WEB paid higher prices for the purchase of electricity, but could not, on the other hand, charge higher electricity and drinking water prices to its consumers. WEB was also unable to make the necessary investments in the infrastructure from the current returns. Moreover, the current regulation framework does not urge the WEB to work efficiently. An inefficiency is the grid loss of electricity, amounting to approx. 13.5%, which is considerably higher than in the European Netherlands. To conclude, WEB's governance was unclear. A government company which provides in an essential basic need (electricity and water), and which operates vital infrastructure, should be entirely transparent. This was not the case, for example, with regard to the (financial) reporting, agreements that were entered into with external parties, or the earnings and remuneration of directors. There was no corporate governance framework in place.

On Saba and Sint Eustatius, the situations of departure are different. GEBE has been the producer, supplier and grid operator for Sint Maarten, Sint Eustatius and Saba, for electricity, for a very long time. The basis for the electricity concession is the old Antillean legislation. Legislation which, just like the BES Electricity Concessions Act, assigned powers to impose requirements on the construction, lay out or utilisation of structures for the production of electricity, with the goal of supplying electricity. The concession which gave GEBE a monopoly, also contained the stipulation that the same price should be charged on all three islands (single tariff structure), after approval by the island governing bodies. The concession was extended for Sint Maarten at the end of 2010, and since this time, GEBE operates on the other two islands without concession. Between Sint Eustatius, Saba and Sint Maarten, it was agreed, in 2011, that GEBE would be dismantled. The background for this is Sint Maarten's desire to no longer be partly responsible for the energy supply on Saba and Sint Eustatius. Instead of GEBE, three separate energy companies will be established on the three islands. The companies on Saba and Sint Eustatius must be operational by 1 January 2014. The ownership will reside with the respective public bodies. A transition period will apply until 2014, in order to establish independent energy companies. The impact for current regulation is present in a memorandum of understanding dated 5 April 2012, which was prepared in light of the arrangements concerning the dismantling of the current GEBE. It is mandatory for GEBE to supply reliable and affordable energy, at a price which is also applicable on Sint Maarten, during the transitory period; the continuation of the single tariff structure. The substantial need for a regulation framework will therefore be required from 2014. The production, distribution and supply of electricity on the islands are vertically integrated.

### § 3. Outlines of the act

The drinking water and electricity companies provide an essential basic need. It is therefore important that these companies correctly interpret their social responsibility. This act is directed at the establishment of an affordable and reliable electricity and drinking water supply. Supply certainty and safety are encompassed under reliability. Transparency, efficiency and effectiveness are understood under affordable. The establishment of the companies is designed by way of the establishment of tasks and obligations of the involved companies, and the requirements imposed on them. Tasks are the activities that are assigned to the companies, to be fulfilled towards other parties; foremost, of course, are the water and electricity consumers. Obligations towards the government are imposed on the companies. Finally, requirements are imposed on the companies with regard to their internal operation. Alongside this, the act interprets the aspect of efficiency by way of tariff regulation, based on costs.

In this act the regulation of the drinking water and electricity supply is elaborated collectively, on account of the closely interwoven and similar nature. Drinking water production from sea water, for example, uses a great deal of energy, and a direct correlation is thereby in place between the price of drinking water and the price of electricity. In addition, drinking water and electricity are, in most cases, produced and distributed by the same company on the islands. Finally, the infrastructure for

the transport by way of networks, and the supply of drinking water and electricity, bear a strong resemblance, including the intended tariff regulation.

The companies that are subject to legislative rules expand at least one of the following activities: the production of electricity, production of drinking water, distribution (in the sense of transport and supply) of electricity, or distribution of drinking water. These activities may be performed in one single company, as is the case for Sint Eustatius. The activities may also be separated, such as the production of electricity on Bonaire by Contour Global, and the distribution and supply of electricity and the entire chain of drinking water being operated by the Water en Energiebedrijf Bonaire. The decision to bundle activities in companies may therefore differ per island, and can also change during the course of time. Transport and supply are bundled in one company, however, which is called the distributor. One distributor is in place per island, except for water distribution by way of tank lorry on Saba; while there can be multiple producers.

For the drinking water supply, it is not desirable to open up the infrastructure, from a quality assurance and legal liability perspective, in terms of drinking water quality. From a quality control perspective, it is also preferred that the ownership and management of the infrastructure, production and distribution of drinking water, be in one hand. Each step in the process of the drinking water supply does, after all, influence the quality of the supplied water.

### 3.1 Producers

In the act, the production of drinking water and electricity for supply to external parties is, in principle, granted by way of a non-exclusive permit from the Minister. Multiple companies can be granted a permit for this purpose, for electricity or drinking water. In practice, the permit will mostly be limited to one company, which can be appointed as the producer of drinking water and electricity. A producer is charged with the task of contributing to the supply certainty, also for the long-term. Said producer's business management must be directed at a reliable efficient and future-proof supply.

Electricity production for external parties is not a pure monopoly, because multiple parties are able to generate electricity with solar panels, for example. These parties generate for personal consumption, but can also feed into the grid, so that third parties can use their electricity. Despite this, it applies on all islands that there must be at least one company which can provide in the demand for electricity when the sun is not shining and the wind is not blowing. Production of renewable electricity for personal consumption is not subject to a permit.

Rules may be imposed with regard to the production, by way of governmental decree. In view of the quality requirements imposed for public health, rules are imposed, in any event, with regard to the quality and quality control of the drinking water production.

An appointed producer should keep separate accounting, in which the statutory tasks are included with the relevant function, entirely and exclusively. The tariffs that are charged by a distributor must be established in advance and must be fixed for at least one year; also refer to paragraph 3.2. In order to make this financially feasible for the distributor, the tariff charged by the producer to the distributor, must also be fixed for a period of one year. This legal obligation does not imply a heavy burden on the producer, because the producer, in turn, can protect itself from fluctuations in the oil price, by way of establishing a fixed price for oil with the supplier, or by means of covering the risks with financial instruments. The production price charged to the distributor by the producer should be based on costs, including commission in view of a reasonable return. The price should be split between a fixed component, based on capital costs, and a component dependent on consumption, in which the other costs are included.

### 3.2 Distributors

Transport of electricity and drinking water is a monopolistic activity, because the creation of multiple transport networks, with regard to total social expenses, is undesirable. Supply on the islands is also a monopoly, and splitting up the supply by allowing multiple suppliers is not desired. On account of the scale disadvantages, an integrated transport and supply company is established

on each island, referred to as the distributor. An exclusive appointment by the Minister (Article 3.2) will be required for distribution. An exception is the water supply on Saba, which does not use a pipeline network, but rather transport by way of tank lorries. High-quality and efficient transport networks are essential prerequisites for good supply. The network operator must install, operate and maintain an appropriate and reliable network, including meters. Furthermore, the operator must renew and expand its network, to allow for non-discriminatory connection and consumption of electricity or drinking. The operator must own its network.

By governmental decree, rules can be imposed with regard to the distribution, and in any event, quality requirements will be incorporated herein for public health, with regard to drinking water distribution.

The point of departure is that all who request it be connected and receive supply. The network operator will only be allowed to refuse connection when the costs of expansion are disproportional compared to the value of the extra connection. A distributor can only terminate supply based on important grounds. An unequivocal policy should also be in place, based on the objective criteria of whether or not to refuse a connection or supply. The installation and maintenance of reliable meters and the establishment of a complaints procedure in the event of failures, are also included under the distributor's tasks.

From a business-economic perspective, not all consumers are connected to the drinking water network on Bonaire and Sint Eustatius. As described above, it is not mandatory for the distributor to construct a connection which is not profitable from a business-economic perspective. It is mandatory for the distributor, however, to supply drinking water to the consumers that are not connected (usually by way of a tank lorry). With regard to fields, locally known as 'knoeken', on Bonaire, it applies that it is not mandatory for the distributor to supply drinking water, unless when charging for transport costs and costs per cubic metre of drinking water supplied. On Saba, drinking water is only supplied by way of road transport. The tariff arrangement in paragraph 3.3 is applicable in this case.

Since the distributors operate monopolistic infrastructure, they should operate in an entirely transparent, non-discriminatory and cost-effective manner. The act therefore governs the management and establishment of the distributors. Specific requirements are imposed on the accounting, financial statements, the auditing thereof and publication thereof, for large companies, in the BES Civil Code, Book 2, Title 5, Section 4. Since the current companies do not fall under the definition of large companies (Art. 119, second section, Book 2), an obligation is included in this Act in accordance with which to act.

Distributors keep separate accounting in which the statutory tasks with each of the activities, distribution and supply, are included entirely and exclusively, also separate for electricity and drinking water. The supervisory body should deem this accounting transparent. This requirement applies in addition to the requirements in the BES Civil Code. It is important for supervision and transparency that the costs related to the production, transport and supply, are clearly distinguishable. This separation is also a prerequisite for effective supervision of the tariffs. Costs should be clearly allocated to activities, in accordance with the actual use of resources for the activities. If production and distribution are organised within one legal entity, transparency in the costs per activity should be guaranteed. For this purpose, it is required that the different functions are justified independently on a financial basis. Within integrated companies, fixed distribution codes for cost entries associated with several activities, must be maintained. The separation into separate entries compels transparency and prevents cross-subsidies between the various activities. Furthermore, in accordance with the requirements applicable in the Netherlands, it must be reported in the explanatory notes to the financial statements, each company with which an agreement is entered into, of which the return or costs exceed an amount of \$100,000.

The shares of the distributors that operate a network, WEB Bonaire and the companies to be established in Saba and Sint Eustatius, should be in the hands of one or more governments, directly or indirectly. In this case, the shares are in the hands of the relevant public bodies. The Island Council will hold at least one general shareholder's meeting per year. A Supervisory Board

will be appointed, consisting of three persons for each company. The appointment of a commissioner requires approval from the Minister of Economic Affairs and the Minister of Infrastructure and the Environment. The restriction in size, to three individuals, limits the overhead costs. The size of the companies justifies the smallest possible management team. The Supervisory Board supervises the company's management. In fulfilment of its task, the Supervisory Board directs itself at the interests of the company.

### 3.3 Tariff regulation

The objective of the tariff regulation is threefold. The first goal is consumer protection. Since the consumers of network-bound services are unable to negotiate their own tariffs, the supervisory body observes this role. The second goal is investor protection. A stable and predictable regulation climate protects investors, so that the company is able to make the necessary investments in the infrastructure, including production capacity. The third and final goal is productive efficiency of the company. Services of sufficient quality can thereby be provided at the lowest possible costs.

Cost orientation is the point of departure for the tariffs for production, transport and supply. Cost orientation is also the point of departure for the distribution of drinking water by road transport to those who are not connected. The producers and distributors are allowed to incorporate a profit margin in the costs, for the associated risks.

A tariff which is independent of consumption will also be implemented, besides the existing tariff which is dependent on consumption. With this tariff it applies that the actual size of the connection, and not the consumption, determines the tariff. The most important reason for this is the principle of what causes the costs. Network costs are, after all, mainly determined by the peak demand which must be available for supply. A person that only uses his entire connection capacity once a year still needs capacity that can supply the demand. The introduction of a fixed tariff also applies for the fixed costs of established production capacity that are, after all, independent of use.

A drinking water installation, a generator or a wind turbine, are written off according to accounting rules, in a manner independent of use. A generator's fuel costs are, on the other hand, are dependent on the amount of electricity produced and supplied. If a producer is a different company than the distributor, the producer will charge the distributor a component dependent on consumption, and a component which is independent of consumption. These components of the distributor's purchase costs are subsequently charged by the distributor to the consumer, in the same manner, divided into a component dependent on consumption and a component independent of consumption. The tariffs can be adjusted no more than once a year. This offers clarity to the consumers and simplifies the preparation of the account.

----- The text in this frame is not  
part of the Explanatory Memorandum -----

#### Explanatory notes for the consultation

The system of a capacity tariff is preferred from an economic perspective. This system assumes that consumers have a connection with a capacity which is reasonably tailored to their peak consumption. At the time of preparation of this draft act, it is not yet clear for all islands whether the consumers actually have this. The effects on the bills of the various consumption profiles have not been calculated yet either.

Parallel to the consultation, investigation is conducted of the capacities of consumers and tariff effects, in collaboration with the distributors. One possible outcome is that the capacity tariff will, preferably, only be implemented after a preparatory period, because the connections of consumers must first be set according to their peak consumption.

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The drinking water and energy companies are assured that the efficient costs, including a reasonable return, are covered in the tariff. Given the scale of the islands and the public-private ratios on the islands, the Authority for Consumers and Markets is appointed supervisory body for the tariffs. The supervisory body approves tariffs that are low enough to serve as a stimulant for efficiency improvement. A supervisory body that creates prerequisites for a reliable, high-quality, and affordable energy supply, in particular, actually serves in the interests of the producer, distributor and consumer. A tariff which is low enough ensures a restriction in the monopolised profit to be made, resulting in cross-subsidisation not being possible, or hardly.

The Authority for Consumers and Markets should approve tariffs that are based on costs. It can hereby establish a discount on the earnings from tariffs, based on the expected efficiency improvements of the companies. Such a discount can be based on the dynamic efficiency improvement that can be expected of the companies, the so-called frontier shift. The Authority for Consumers and Markets is also able to establish the static efficiency and to impose requirements on this efficiency, by way of the tariffs, based on a study of or comparison with other companies. Another method with which to promote efficiency improvements is considered. In this alternative, the rates are established on a multi-year basis. An increased efficiency during this period leads to a higher profit for the company. The company is therefore rewarded for increased efficiency. This alternative has not been included in the Act, because the incentive can have a limited effect if the company should choose to continue with the old working method, and not to save costs.

Introduction of a capacity tariff leads to another effective overall bill, compared to the current system with tariffs that are only dependent on consumption. With a capacity tariff independent of consumption, consumers who consume little, (because they are only on the island twice a year, for example), pay in the same manner as consumers with the same type of connection (the same peak demand), but with a more stable and therefore larger consumption.

Consumers with a very low peak demand and a low consumption (because they only have a fridge, for example) also pay a fixed tariff in accordance with the proposal. It can be established, by ministerial decree, how the capacity tariff can be limited for consumers with the lowest connection capacity. The distributor will compensate for the lower revenue associated with such a category, by way of the higher revenue from other consumer categories.

Alternatives have been considered, to limit the change in the account as a result of the introduction of the capacity tariff. One alternative is to leave it up to the distributor to determine which tariffs will be charged to the various consumer categories. The Authority for Consumers and Markets is then restricted with the approval of tariffs, to the testing of cost categories for the overall revenue expected from tariffs. The drawback of this alternative is that a distributor has no framework based on which to differentiate the tariffs, and has no interest in differentiation. The alternative has also been considered to not include any deviation in cost orientation. The increase of the account will, after all, largely be mitigated by the subsidy on the transport tariff, refer to paragraph 3.4. It also applies for electricity that the overall account in the Caribbean Netherlands will remain restricted compared to the European Netherlands, because energy tax will not be charged. Despite these considerations, the introduction of the capacity tariff remains a negative effect on the affordability of the accounts for those consumers who are the least well-off. This effect is mitigated in the act.

The feed-in tariff for decentralised production of electricity by parties other than the appointed producers dealt with in paragraph 3.5, forms the only exception to cost orientation.

### 3.4 Subsidy from the European Netherlands

The water and electricity supply form an important cost entry for the residents of the Caribbean Netherlands. The price for a litre of water in the Caribbean Netherlands is up to thirty five times more expensive than in the European Netherlands. For a kilowatthour in the Caribbean Netherlands one pays approximately double compared to the European Netherlands (price level 2013). The cost for the supply of water and electricity in the Caribbean Netherlands is high, whilst the average income level is low.

These high tariffs cannot be paid by many residents in the Caribbean Netherlands. It is desirable, however, for the supply of an essential basic need to be affordable for all consumers. In the short-term, acceptable affordability is not possible without subsidy. For this reason, a subsidy is incorporated in this act. The subsidy is intended for the distributor to cover part of the costs for transport. The distributor, in turn, will only charge those costs that are not covered by subsidy, in the tariffs.

The reason for directing the subsidy to transport costs is that, on account of the introduction of tariffs that are independent of consumption, a change will take place in the distribution of the overall account between consumers. The effect of this is limited by reducing the new component, the tariff which is independent of consumption. Furthermore, the effects of the introduction of the tariff which is independent of consumption are also directed by establishing a capacity tariff for the smallest consumers, as described in paragraph 3.3.

It is expected that operation of the network will remain structurally more expensive than in the European Netherlands, as a result of the small scale of the islands, but that there are efficiency profits to be attained. It can also be expected that other cost components will decrease. Costly oil will be saved, for instance, through increased renewable generation. Various studies point out that the production component of the total costs will decrease. On Saba and Sint Eustatius, wind turbines will form a considerable part of the production, in the short-term. On Bonaire, the financial difficulties of the past will be settled, and it is expected that the costs and relations will normalise. For all three functions, production, transport and supply, it applies that efficiency profits can be attained. The overall costs to be covered will then also decrease. For this reason, it is provided that the subsidy which is required to keep the account affordable will decrease. The subsidy amount is established by ministerial decree and will decrease, the coming 5 years, with 10% each year. After five years, the affordability and the subsidy will be evaluated.

### 3.5 Renewable decentralised electricity supply

In the Caribbean Netherlands, the sun shines abundantly and the wind blows often; this potential for the production of renewable electricity must be utilised. In addition to centralised production with large wind turbines and solar farms, decentralised production also has a great potential. This pertains to small and large-scale consumers, who generate electricity for personal consumption, in the first place, using a solar panel or wind turbine, for example. When the relevant consumer produces more than what he can consume, the excess production is usually fed into the grid automatically, by virtue of standard grid technology, therefore to the distributor. They hereby actually become a producer. The tariff that they receive for electricity which is fed into the grid is called the feed-in tariff. On usual meters the measured amount decreases, so that consumption from an earlier moment is offset by the feed into the grid. This is called netting off. Effectively, the feed-in tariff is then equal to the supply price. Decentralised production leads, in the first place, to lower costs for those individuals who invest in decentralised electricity production. There are several added advantages. In terms of sustainability, it involves making the energy supply more sustainable, the associated environmental effects, the promotion of a more conscious consumption of energy, and the green appearance of the islands. Financially, it involves the fact that consumers invest and pay along in the investment costs for the overall energy supply. Technically speaking, there is the advantage that part of the peak demand during the day is skimmed by solar energy, in particular. With the current price of electricity and the number of sunny hours on the islands, an investment in renewable production capacity is earned back rather quickly, with a low feed-in tariff.

The act contains that household consumers may net-off to an unlimited extent. Their feed-in tariff is therefore equal to the variable supply tariff. Decentralised renewable generation of electricity by households is therefore stimulated, without the distributor having to implement direct grid enhancements and without smart meters having to be installed. The scale at which households generate electricity has a stabilising effect on the grid and on the system balance. This does not apply for larger scale feed-in, or in the event that the feed-in takes on enormous proportions. For consumers other than households, who want to feed into the grid, it applies that the distributor may establish a feed-in tariff. The feed-in tariff has an immediate effect on the appeal to decentralised production and on the accompanying actual development thereof. When the feed-in tariff is too high, there is a risk that too little is invested in an island's more efficient centralised



production (such as wind turbines or solar farms, for example), and that more is invested in scattered decentralised production, so that a societal optimum is not achieved. When the feed-in tariff is too low, there is a risk that sustainable initiatives and the readiness to invest in these, by new parties, will not bear fruit. The feed-in tariff is therefore exceptionally suited as a parameter with which the establishment of the electricity supply can be controlled.

The feed-in tariff should be established in such a way that the energy supply on the islands can be incorporated as efficiently as possible. With this it is expected that a balance will still have to be sought, between sufficient investments in decentralised, sustainable initiatives, and the prevention of overinvestment in this production capacity; between sufficient capacity with high supply certainty (generators on fossil fuels) and renewable energy; and between grid enhancements as a result of efficient central production and saving on grid enhancements thanks to local production and consumption. In addition, the feed-in tariff must always be viewed in relation to the electricity price, whilst this changes with the price of oil and the actual contribution of non-fossil fuel generation (both centralised and decentralised) to the overall supply. Finally, it applies that in the event of a significant share of decentralised feed-in, the feed-in tariff can also influence the price of electricity. For this reason, the decision was made to leave this up to the distributor. The distributor is also not obliged to enhance the connection on account of feed-in. The Authority for Consumers and Markets oversees that possible differences in the feed-in tariff for various decentralised producers, and the policy regarding whether or not to enhance connections on account of feed-in, are based on objective and reasonable criteria.

As an alternative to the feed-in tariff amount, it has been considered to leave the feed-in tariff entirely up to the distributor. The drawback of this is that the renewable potential with households and the willingness to invest, by consumers, will possibly remain unutilised. The option of charging the Authority for Consumers and Markets with the task of assessing the feed-in tariff has not been included in the Act, because the execution burden for this is relatively substantial. Smart meters would then have to be installed with all households.

Introduction of the capacity tariff has a stabilising effect on the cost allocation amongst consumers. Parties who generate a great deal of renewable electricity for themselves, do, after all, continue to contribute to the supply of electricity, through the capacity tariff which is independent of consumption. In continuation of this, a consumer is not permitted to generate their own electricity and to leave the grid, a 'stand-alone' prohibition. This is a violation of the consumer's freedom, but on a small island, people are, in all aspects, reliant on one another. The obligation to participate in the collective supply is therefore an appeal to take one's societal responsibility, to the energy consumers on the island that are better-off, in particular. When a party uses the electricity generated individually, in full, and does not feed into the grid, the connection is, in actual fact, not used. In the act, this does also not discharge a party from contributing to the collective supply either. Parties who were already self-sufficient prior to 1 July 2013, and who did not have a physical connection to the grid, will not be charged the capacity tariff. Parties who provide in their own electricity needs, and who leave the grid on or after this date, will be charged the capacity tariff for a period of five years after shut-off.

### 3.6 Decentralised drinking water supply

Decentralised drinking water production for own consumption is allowed, such as the collection of rainwater in cisterns. Supply to the drinking water network, by anyone other than an appointed producer, is prohibited. Furthermore, disconnection from a drinking water network which is in place, and producing one's own water, is not allowed. A complication with decentralised drinking water production is that the network costs and fixed costs for the established production capacity, with the producer, will be discounted in the prices for the other consumers. In order to prevent this, all consumers pay the capacity tariff applicable to them.

## § 4 Execution and enforcement

### 4.1 Execution

The size of the electricity and drinking water supply on the islands is so small that it is difficult for the companies to gain knowledge and expertise, and to retain this. Here are also possibilities to attain efficiency improvements. For unlocking knowledge and expertise with regard to regulation of the electricity and drinking water supply on other islands in the Caribbean area, collaboration may, in addition, be entered into. Bonaire and Sint Eustatius have entered into a cooperation agreement with the drinking water company, Vitens Evides Internationaal, for drinking water.

#### 4.2 Enforcement

In this act, the regulation of the provisions for the production, transport and supply of electricity and drinking water is encompassed under one act. Both public provisions overlap extensively: for electricity and drinking water there are production installations and valuable pipeline networks that are operated within a private legal form. For both provisions it applies that the quality and quantity of both must be guaranteed to the greatest extent possible, from a socio-economic, health and safety point of view. Public health interests are served, in particular, through the good quality of drinking water.

It is desirable that citizens and companies deal with an unequivocal regime in terms of enforcement, and are not greeted with a multitude of instruments or supervisory bodies representing the government. Lucidity is also important for the civil servants who are charged with the task of enforcement, in the repertoire of sanctions.

The Minister is responsible for the appointment of a producer or a distributor for electricity and drinking water. The Minister may impose orders with regard to the permit, appointment or production. Administrative enforcement is desired in this enclosed context, because the Minister can thereby interpret an effective form of enforcement, in an individual manner. Current legislation (BES Drinking Water Act and the BES Electricity Concessions Act) is also enforced administratively, for the most part.

From Article 2 of the Act establishing BES, it follows that the General Administrative Law Act of the European Netherlands can be declared (partially) applicable to the Caribbean Netherlands. In this context it is proposed that the powers, mentioned in Chapter 5 of the General Administrative Law Act, be declared correspondingly applicable.

The Minister and the ACM are sufficiently authorised to effectuate this enforcement, pursuant to these titles. This pertains to an order under pain of penalty, administrative enforcement and an administrative fine. In addition to these powers, other particular powers are also necessary, namely to prohibit the supply of drinking water (in connection with a risk to public health, for example) or to revoke a permit or an appointment.

The primary task of the appointed supervisory body is to observe the maintenance of a reliable and sustainable supply of electricity and drinking water on Bonaire, Sint Eustatius and Saba, in compliance with the established quality requirements. With organisation of the supervision and enforcement, the specific circumstances on the islands must be inspected critically. The power to appoint supervisory civil servants rests with the Minister.

It was indicated before already that ILT will be appointed supervisory body in terms of the quality and safety of the electricity and drinking water supply, but legislation does, however, make room for the appointment of a local supervisory body, as well, with approval of the public body. For this purpose, the expertise at hand must be reviewed and the costs to build this (education and knowledge infrastructure), as well as the supervision which must be taken up in continuation of that, locally.

With the deployment of the supervisory body, coordination is required in order to properly align the resources for supervision. Power of coordination and control of supervision is encompassed with the Minister. An enforcement plan can be drawn up by ministerial decree. This plan governs the priorities that are set and the resources that are deployed to perform a specific supervisory task. Coordination also takes place with the involved enforcers, such as the Public Prosecutor's Office, the public body and the ILT and ACM. There is a need for proper integral arrangements with regard to the execution of supervision, on account of the small scale of the island, the limited capacity and the range of legislation.

#### Legal protection

The BES Administrative Justice Act (wet administratieve rechtspraak BES) is applicable, pursuant to Article 3 of the Act establishing BES, to decrees that are struck following an act which is only applicable in the public body. Pursuant to the Act, an appeal can be filed with the Joint Court of Justice of Aruba, Curacao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The BES Administrative Justice Act describes a decree as 'a written decision by an administrative authority, entailing a legal act governed by public law, which is not generally applicable'.

#### §5. Effects and liabilities involved in the act

PM

#### §6. Consultation and counselling

PM

#### II. EXPLANATION BY ARTICLE

Included in articles of the Act itself.

The Minister of Economic Affairs,

The Minister of Infrastructure and the Environment,