

EXPLANATORY MEMORANDUM

GENERAL

1. Introduction

Digital services are now a matter of course in the European part of our country. From applying for AOW and making a tax return to filing health care claims: it can be from home; from the computer or smartphone. This is easier, saves citizens a lot of time and makes public services better and more efficient. In order to serve citizens at a distance, electronic, good service, a reliable login tool and a unique identifying number are required. Therefore, since 2007 all residents of the European Netherlands have a citizen service number (hereinafter: BSN) and they have access to the login tool DigiD.

In the Caribbean part of our country, the public entities Bonaire, St Eustatius and Saba, (hereinafter: The Caribbean Netherlands) is different. Communication between citizens and government via paper or at the counter is more the norm, digital services are less obvious. This existing form of service (physically and on paper) is not in itself wrong and will continue to exist for anyone who prefers it. At the same time, it is desirable to make the benefits of digital services *possible* in the Caribbean Netherlands. So that citizens and companies can also use DigiD and eherkenning to do business with the European Dutch and Caribbean Dutch government. With the motion of Member Bromet et al. of 14 October 2021, the government was asked to complete the investigation into the introduction of the BSN in the Caribbean Netherlands as soon as possible and if this investigation does not reveal insurmountable contraindications, to bring the necessary legislative amendments to the parliament.¹

A number of laws and regulations still stand in the way that all 29418 inhabitants² of the Caribbean Netherlands get a BSN and that the digital facilities, such as DigiD and eHerkenning, become available there. This is because, when Bonaire, St Eustatius and Saba became part of the country of the Netherlands in 2010, not all European Dutch laws and regulations became applicable there. For example, it was ensured at the time that the constitutional transition would not bring too many (hardly manageable) changes for the islands in one go. In the meantime, this principle of restraint in the field of legislation and regulations has been abandoned. The new starting point is that in the Caribbean Netherlands as much as possible, the same rules apply as in the European Netherlands, unless there is a specific reason to deviate. In short: apply or explain.³ This bill is in line with that new starting point.

With this bill, several existing laws will be amended to bring the digital services of the (semi) government in the Caribbean Netherlands to an equivalent level as in the European Netherlands. The proposal for Caribbean Netherlands achieves that: registered residents get a BSN, residents and companies have access to digital login tools such as DigiD and eHerkenning and authorities, such as the Caribbean Netherlands Tax Authority, are allowed to use (process) the BSN in their services. To that end, the following acts are amended: the Basic Registration of Persons Act (BRP Act), the Basic Administrations of Personal Data Act (Bap BES Act), the General Provisions Act on Social Security Number (Wabb), the Digital Government Act (WDO) and the Identification Cards Act BES (WIDk BES).⁴ It thus implements the above motion of Member Bromet et al of 14 October 2021. This explanatory memorandum focuses first on the general objective and background of the introduction of the BSN and the facilities of the digital government in the Caribbean Netherlands. Thereafter, the amendments to these laws will be explained separately.

¹ *Parliamentary documents II 2021/22, 35925 IV, No 19.* <https://zoek.officielebekendmakingen.nl/kst-33219-3.html> <https://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vln26q9b4szo>

² Source: CBS, reference date 1 January 2023.

³ After a period of so-called 'legislative restraint' from 10 October 2010, the starting point of legislative restraint was abandoned in October 2019 (see *Parliamentary Papers II 2019/20, 35300-IV, No 11, p. 3-4*). Instead, the principle of application applies or explains.

⁴ This bill also contains a legislative amendment to Article 24 of the Personal Data Protection Act BES, see article-by-article explanation of Article V.

2. Content

2.1 Objective and delimitation

The Caribbean Netherlands lacks a unique number without personal data that is widely used and an associated authentication facility. Use of an existing facility such as DigiD is desirable, because the login tool can then be used by citizens in both European and Caribbean Netherlands and because the Caribbean Netherlands and the government departments that carry out government tasks for the citizens of the Caribbean Netherlands do not have to incur any costs for the development of their own provision. The use of DigiD requires having a BSN.⁵ The majority (an estimated 80 percent) of the inhabitants of the Caribbean Netherlands currently do not have a BSN. As an identifying number, the so-called Identity Number (hereinafter referred to as: ID number) used that is included on the identity card BES. However, this number is neither unique nor without personal data. The ID number contains information about the person to whom the number was issued: the date of birth and a serial number that can be traced back to the island of registration.⁶ Because the combination of sequence numbers to be used is finite and therefore has to be reused, it happens that several residents have the same ID number. As a result, citizens cannot be clearly identified. This can have adverse consequences for the provision of services to citizens and can lead to errors in the implementation processes of the government.

Bonaire, Sint Eustatius and Saba have their own legal system on the basis of Article 2 of the Act public entities Bonaire, Sint Eustatius and Saba, which consists largely of adopted Dutch-Antillean regulations or regulations specifically created for those islands. Only a limited number of schemes currently apply in both the European part of the Netherlands and the Caribbean Netherlands. Another important difference with the European part of the Netherlands is that Bonaire, St. Eustatius and Saba have the status of overseas countries and territories (OCTs) vis-à-vis the European Union, so that EU regulation does not in principle apply to the Caribbean Netherlands. A regulation only applies there if this is provided for by a statutory regulation or otherwise clearly follows from a statutory provision. If nothing is provided for in a Dutch legislation and its applicability in the Caribbean Netherlands does not follow from any other statutory provision, that scheme only applies to the European part of the Netherlands.

The regulations on the BSN and the facilities of the digital government therefore only apply to the European Netherlands. It is not legally possible under the Wabb and the BAP BES Act to obtain a BSN in the Caribbean Netherlands and to have it registered in its own population administration. In order to obtain a BSN, it is now necessary to travel to a registration facility in the European Netherlands for registration as a non-resident. If someone already has a BSN due to such a registration or because of previous stay in the European Netherlands, it is now not allowed for government organisations in the Caribbean Netherlands to process that BSN. There is no legal basis for this in the Wabb. Finally, the WDO is currently preventing government entities in the Caribbean Netherlands from using DigiD in their services, this is because the application of that law is territorially limited to the European Netherlands.

This bill extends the territorial scope of the Wabb and WDO to the Caribbean Netherlands. In addition, the relevant BES legislation is amended in order to be able to include the BSN in its own population administration and on the BES identity cards (hereinafter: ID cards BES). The BRP Act is amended in order to include the BSN of CN residents in the BRP. The latter is necessary for the functioning of the digital government facilities connected to the BRP such as DigiD. With this bill, it is realised that:

- (1) all registered residents of the Caribbean Netherlands have a BSN (amendment to the BRP Act, see section 2.3);

⁵ Article 3 Provisional provisions of the GDI. Having the BSN is one of the conditions for obtaining a DigiD, in addition, the applicant must have the Dutch nationality or nationality of another EEA country.

⁶ Article 2, paragraph 1, subsection e of the BES Identity Cards Act.

- (2) in addition to the BRP, the BSN is included in the personal registration of the public entity, the basic administration of personal data BES, hereinafter: BAP BES⁷ (amendment to the BAP BES Act, see section 2.4);
- (3) government entities and other users in the Caribbean Netherlands are entitled to process the BSN (modification of the Wabb, see section 2.5);
- (4) citizens and businesses can log in safely and reliably to the (semi-) government (change WDO, see section 2.6);
- (5) the BSN is recorded on new ID cards BES to be issued (amendment WIDk BES, see section 2.7).

In order to better serve citizens more quickly and to reduce the implementation burden for organisations in the Caribbean Netherlands, this proposal connects as much as possible to existing (technical) facilities and processes. This is primarily about the already existing facilities in the European Netherlands for the granting and use of the BSN and digital login tools, which are also used with this proposal for (services in) the Caribbean Netherlands. This includes the BRP, the facility BSN, DigiD and eherkenning. In addition, the BSN is incorporated into the existing facilities and processes in the Caribbean Netherlands; the Bap BES and the ID card BES.

The introduction of the BSN and the WDO is limited to (registered) residents of the public entities (Caribbean Netherlands). With this bill, the BSN cannot be introduced in the Caribbean countries Aruba, Curaçao and Sint Maarten because laying down rules on the personal number is not a national matter – but a national matter. This also applies to the rules on digital government (WDO).

2.2 Alternatives

With the introduction of the BSN and the WDO, the aim is to improve the digital services for and in the Caribbean Netherlands. The alternative to the introduction of the BSN and the WDO is the use of another person-identifying number and a private public login tool; there is no need to amend legislation. Currently, there are three person-identifying numbers in use in the Caribbean Netherlands: the ID number, the A-number and the CRIB (Central Registration Information Taxable Information) number. However, the wider use of these numbers for DigiD or any other login tool is undesirable. The use of the ID number is undesirable because this number – unlike the BSN – is not unique and it contains information about a person. For the CRIB and A-numbers, it is currently not possible to get a DigiD with these numbers. The CRIB is intended as an identification number for citizens in relation to the Caribbean Netherlands Tax Authority and is assigned to persons and entities that are subject to administration under the BES Tax Act. It cannot be used in contact with the European government. The A-number acts primarily in the Caribbean part of Kingdom to coordinate the various population administrations (including the Caribbean Countries). It contributes to the prevention of double registrations.

An alternative to the use of a public login tool as referred to in the WDO is currently being used by the Caribbean Netherlands Tax Authority for the MijnCaribisch Nederland platform. For example, a private login tool for public sector entities is only a partial solution, because digital matters with the European Netherlands will still require DigiD or other EU login tool. In addition, given the small-scale use, its own login tool is less cost-efficient and manageable to maintain more complex than using DigiD.

2.3 Amendment of the BRP Act: registration of the resident of a public entity

This section addresses the first step: the registration of residents of a public entity in the BRP. They receive a BSN. For this purpose, amendment of the BRP Act is necessary in order to create a legal basis for the registration of these persons in the BRP.

2.3.1 Introduction

⁷ The term 'PIVA' is also used in this context; the personal information provided by the Netherlands Antilles and Aruba. In this explanatory memorandum, the formal designation Bap BES is retained, meaning the Bap BES of the public sector bodies.

The BRP Act forms the legal framework for the registration of the population of the European Netherlands. The BRP contains personal data of residents of the Netherlands (residents) and others who have a relationship with the Dutch government (non-residents). The BRP Act and underlying regulations stipulate which data is recorded, who is responsible for this and under which conditions data is shared with government organisations and third parties. The council of mayor and aldermen is responsible for the registration of residents of its own municipality (residents), the Minister of BZK takes care of the registration of non-residents. The scope of the BRP Act is limited to the European Netherlands, the population registrations of the public sector entities have its own legal framework: the BAP BES Act. Any person registered in the BRP (resident or non-resident) has a BSN. And anyone who has a BSN is in the BRP. In other words: there are no persons who do have a BSN but are not included in the BRP. This link between BRP and BSN is important, because the BRP provides an explanation for implementing organisations whether and which BSN someone has. The provision of public services is a problem if it is no longer possible to check whether the BSN belongs to the person concerned. It is therefore necessary to also attach a BSN to registration in the BRP for residents of the Caribbean Netherlands.

2.3.2 Contents

This bill inserts a new section in Chapter 2 of the BRP Act for the registration of a third category registered alongside residents and non-residents; the residents of a public entity. This section explains in more detail the amendment to the BRP Act. This will deal successively with the definition and responsibility, the (first) registration, the maintenance (up-to-date) of data, the provision and supervision. This is the order of the BRP Act.

2.3.2.1 Definition and responsibility

Chapter 1 of the BRP Act contains general provisions, including definitions and responsibilities within the BRP system. This chapter is amended for the introduction of the new category of registered persons: residents of a public entity. Firstly, a definition is included on this new category. A resident of a public entity shall mean: the registered person, who has his address in one of the public entities Bonaire, Sint Eustatius or Saba, and whose personal list does not include the fact of his death as current information.⁸ Article 1.2 provides that, in addition to data on residents (European Netherlands) and non-residents, the BRP also contains data on residents of a public entity.⁹ The Minister of BZK will be responsible for the maintenance and systematic provision of this data (Article 1.4(2) and Article 1.5 of the BRP Act).¹⁰ This is due to the fact that the Minister is already responsible for the registration of non-residents and for the technical provisions for the systematic provision of data. The registration in the BRP explicitly does not replace the public entity's own population administration (Bap BES), but also exists. The alternative to creating a third category registered in the BRP is to register all residents of the Caribbean Netherlands as a non-resident. They also have a BSN. However, this alternative is not preferable, because registration as a non-resident does not sufficiently reflect the fact that the citizens concerned are residents of the country of the Netherlands.

Pursuant to Article 1.6 of the BRP Act, a general administrative order determines which of the general BRP data are considered authentic data. The classification of a given as authentic means that public entities are, in principle, obliged to use this information.¹¹ For data on residents of a public entity, it is foreseen that they will not be considered authentic in the Decree on Basic Registration of Persons. Mandatory reporting on possible incorrect BRP data is therefore not at issue.¹² Authenticating would mean that public entities in the European Netherlands will be obliged to take the data on residents of the Caribbean Netherlands from the BRP. As a result, they would no longer be able to obtain this information from the Bap BES. This is undesirable because the starting point remains that public entities in the European Netherlands are provided with the data

⁸ Article III(A).

⁹ Article III(B)

¹⁰ Article III(C)

¹¹ Article 1.7 of the BRP Act.

¹² Article 2.34 Act BRP.

on residents of the Caribbean Netherlands from the source, the Bap BES. The registration in the BRP serves primarily for the functioning of the facilities of the digital government, such as DigiD. Furthermore, it follows from Chapter 1 of the BRP Act that the technical provision for registration by the Minister of BZK is a central facility within the meaning of Article 1.9 of the BRP Act. This means, among other things, that the operation and security of this technical device is recorded in the system description of the BRP.¹³

Finally, Article 1.15 of the BRP Act states that the Minister of BZK periodically consults with representative representations of the municipalities, of the designated administrative entities and of the public entities and third parties to whom information is provided. In any case, the consultation concerns intentions to amend laws and regulations, the quality policy and the financing of the BRP. On the basis of this bill, the public entities are added as participants in this so-called User Consultation BRP.¹⁴ This is due to the new role given to the administrative colleges in the maintenance of data on residents of a public entity in the BRP.¹⁵

2.3.2.2 Registration and maintenance

This bill inserts a new section for the registration of residents of a public entity in Chapter 2 of the BRP Act.¹⁶ Only persons registered as a resident of a public entity in the Bap BES may be included in the BRP as a resident of a public entity.¹⁷ This means that only persons who are lawfully resident and who are reasonably expected to reside in the public entity for at least two thirds of the time for half a year are included in BRP and thus receive a BSN.¹⁸

In this respect, it is important that 'registration' in the BRP Act means: "the inclusion of a personal list in the basic registration".¹⁹ This means that, by definition, a person is only registered once in the basic registration and that changes thereto, for example because the person concerned becomes a non-resident, do not qualify as a (new) registration. Registration of a person as a resident of a public entity is therefore only possible if the person concerned has not yet been included in the BRP (as a non-resident or resident of the European Netherlands).²⁰ This applies at least at birth. If the person who settles in a public entity is already included in the BRP, as a resident of the European Netherlands or as a non-resident, the person concerned is included in his personal list of residences of a public entity. The data of the data subject will be re-established on the basis of a statement from the Executive Board.²¹ It follows that a person who is registered as a resident of a public entity in the BRP cannot be simultaneously registered as a resident (European Netherlands) or non-resident.²² In order to avoid double registration in the BRP, a check and data exchange is always carried out between the BRP and the Bap BES in the process of registration and data retention. This is explained in more detail below.

Initial registration of all residents of a public entity

Upon the entry into force of this bill, on the basis of the proposed Article 2.84 Act BRP,²³ an initial registration will take place of all persons who are at that time registered as resident (resident) of a public entity in the Bap BES. Within this, two groups can be distinguished. There are residents of the Caribbean Netherlands who, in addition to the Bap BES, are already registered in the BRP as a non-resident (before the entry into force of this bill) and there are persons who are only in the Bap BES. The first group already has a registration and a BSN, the second one does not. Using a file

¹³ The system description shall be made up of the parts of the Logical Design BRP not marked as an explanatory note, as included as annex (1) to the BRP Regulation.

¹⁴ Article III(D).

¹⁵ See Section 2.3.2.2.

¹⁶ Article III(F).

¹⁷ Article III(F): the proposed Article 2.84(1) of the BRP Act, in conjunction with Article 27c(1) of the BES Act (Article IV, Section F).

¹⁸ Article 7(1) of the BES Act.

¹⁹ Article 1.1(d) Wet BRP.

²⁰ Article III(F), the proposed Article 2.84(2).

²¹ Article III(F), the proposed Article 2.83, paragraph 4.

²² Article III, section E. This also includes the Covenant on Basic Personal Data of 1 January 1998, concluded between the Government of Aruba and the Administrative Colleges of the island regions of the Netherlands Antilles and the Mutual Arrangement on the Exchange of Personal Data within the Kingdom of 1999.

²³ This is thus a request from the Board of Directors as referred to in the proposed Article 2.84 of the BRP Act. This request for initial registration will be made by providing in one go the necessary up-to-date data on all registered persons in the Bap BES.

comparison between the Bap BES and the BRP, the Minister of BZK determines who already has a BSN. This prevents someone from getting a second BSN. On the basis of this bill, the BRP Act includes an explicit power for the Minister of BZK to carry out this file comparison.²⁴ Upon the entry into force of this bill, the registration of persons from the Caribbean Netherlands who are already registered as a non-resident in the BRP and thus already have a BSN will be converted into a registration as a resident of a public entity.²⁵ For this purpose, the person's status of residence of a public entity is included on the personal list. In doing so, the personal data will be changed (updated) to bring it into line with the Bap BES. As a registration date, the date of first registration (as a resident or non-resident) remains in the BRP and not the date of first registration in the Bap BES. The consequence of this is that benefits in kind to users of the BRP do²⁶ not give a complete picture of the duration of registration in the Bap BES. This means that the Bap-BES will be leading for these users. As an example: certain public services in the Caribbean Netherlands are based on five years of registration as a resident of a public entity, this duration cannot be inferred from the date of first registration in the BRP, but must be inferred from the Bap BES. Data that is no longer up to date, such as a former residence address in the European Netherlands or abroad, will not be deleted from the BRP with this initial registration as a resident of a public entity. For the BRP, the starting point is that a general data once recorded remains included.²⁷ This means that a person already in the BRP (as a resident or non-resident), historical data and data the maintenance of which has been suspended are retained when that person is registered as a resident of a public entity. The BAP BES itself also contains historical data, these are not taken over in the BRP when registering a person as a resident of a public entity. From the Bap BES only up-to-date data is included in the BRP.

In the case of persons who are not yet registered in the BRP at the time of entry into force of this bill and therefore do not have a BSN (second group), the Minister of BZK will register in the BRP and grant the BSN on the basis of that file comparison. The (current) data is derived from the Bap BES and also with respect to this group no historical data from the Bap BES is included in the BRP. This means that the Bap BES will be leading for users who need historical data on registration in the public sector.

Maintenance: keep up-to-date data on residents of a public entity in the BRP

When a person settles in the Caribbean Netherlands, he must report residence and address to the relevant administrative college.²⁸ The Executive council (bestuurscollege) is responsible for the registration of the person concerned. At birth, registration takes place on the basis of the birth certificate. These processes of first registration at establishment and birth do not change. New is that the Executive Board will have to check whether the person is already included in the BRP (as a resident or non-resident). The BRP Act already offers the possibility to provide BRP data to the Executive Board for the purpose of keeping data in the Bap BES.²⁹

Immediately after registration in the Bap BES, the Executive Board will have to notify the Minister of BZK.³⁰ The Minister of BZK then registers the person concerned as a resident of a public entity in the BRP.³¹ If the person concerned has not yet been registered in the BRP, a BSN will be granted. If the person concerned is already registered in the BRP, that registration will be converted to the new department: resident of a public entity. To that end, the person's personal list shall include the residence of a public entity. If necessary, the current data of the data subject already included in the BRP (in connection with the previous registration as a resident of the European Netherlands or non-resident) will be adjusted in order to match the Bap BES. Finally, the Minister of BZK informs the Executive Board of the registration, stating the BSN and the a-number.³²

²⁴ Article III(G).

²⁵ On the personal list, the details of residency of a public body are included.

²⁶ It concerns both users in European and Caribbean Netherlands.

²⁷ Article 2.7(3) of the BRP Act.

²⁸ Article 13(1) of the BES Act.

²⁹ Article 3.12 Wet BRP j.o. Article 43(2) and (3) of Decree BRP.

³⁰ Article IV, Section F. See also paragraph 2.4.2 of this Explanatory Note.

³¹ Article III(F), the proposed Article 2.84(1) of the BRP Act.

³² Article III(F), the proposed Article 2.84(3) of the BRP Act.

Up-to-date data on a resident of a public entity shall only be recorded and modified at the request of the administrative college of the public entity in which the person concerned resides. The person concerned cannot ask the Minister of BZK for registration or for adaptation of data himself. Other organisations cannot make this request either. In that regard, the registration of a resident of a public entity differs from the registration of non-residents. The reason for this is that the registration of current data in the BRP must correspond to the registration of the data subject in the Bap BES.³³ Differences in the recording of up-to-date data on a person can lead to problems in the performance of public authority tasks. It is therefore desirable for the data subject to be able to transmit changes to his data in one place and it is in the reason that he does so at the Executive Board, as is already the case now. In view of this, the Minister of BZK will be given a passive role in the maintenance of data: he will not register or modify data on his own initiative (on his own initiative).

The Executive council (bestuurscollege) is obliged to pass on changes that it makes to the Bap BES to the Minister of BZK, insofar as it concerns data held in the BRP about the resident of a public entity.³⁴ When a public entity moves to the European Netherlands, the person concerned is registered as a resident (of European Netherlands) in the BRP, based on his/her declaration of residence and address with the new municipality of residence.³⁵ When a public entity moves to a country other than the European Netherlands (including Aruba, Curaçao or Sint Maarten) the resident of a public entity is admitted by the Minister of BZK as a non-resident. In all cases, the person concerned retains his registration in the BRP and thus his BSN, including in the case of reverse moving movements: a resident of the European Netherlands or a non-resident who settles in a public entity.

Dataset

In the BRP, the following categories of general data are taken over from the Bap BES concerning the resident of a public entity: name, birth (date), gender, nationality and administration number (a-number). Upon death, this information is also taken over in the BRP from the Bap BES.³⁶ The current data, subject to the BSN, is taken from the Bap BES. In addition, a BSN is granted and registered in the BRP.

The choice for this dataset has two reasons. First of all, it is data that the Executive Board itself also records in the Bap BES. This affiliation with the Bap BES is necessary because the Bap BES is the only source for the maintenance of data on residents of a public entity in the BRP. If a given is not present in the Bap BES, it cannot be tracked in the BRP. Secondly, this ensures that the BRP provides the necessary data for the facilities to check whether a person has a BSN and for the facilities (login resources) of the digital government, such as DigiD.³⁷ As explained in the above, the citizen and organisations other than the administrative college are not authorised to have data entered or updated in the BRP. The right of residence applies that this information about non-residents is kept in the BRP, in the Bap BES the residence permit as referred to in the Law Allowance and Expulsion BES is recorded. These are thus separate legal regimes. The right of residence of the Caribbean Netherlands is therefore not included in the BRP. Government organisations that require data on the residence permit of a foreign national in the Caribbean Netherlands can derive this data from the Bap BES if they are authorised to do so. In addition, data about the residential address in the public entity is not taken over in the BRP. The need for inclusion of these data is lacking as they are not necessary for the functioning of the BSN facilities and public login tools.

The A-number is a general data already included in the BRP (residents and non-residents) and Bap BES. The A-number will also be included in the BRP for residents of a public entity.³⁸ The A-

³³As follows from the above, this is different in the case of historical data and records whose records have been suspended: the BAP BES and BRP may differ.

³⁴ Article IV, Section F. See also paragraph 2.4.2 of this Explanatory Note.

³⁵ Article 2.4 of the BRP Act.

³⁶ Article III(F), the proposed Article 2.85(1) of the BRP Act.

³⁷ The so-called management facility BSN, see also section 2.5.2.2 of this explanatory memorandum.

³⁸ Article III(H)

number is a personal number used in the exchange of messages with the municipalities, respectively public entities and users of the BRP or Bap BES. For the Bap BES, the a-number also has an important function for the registration (transfer) of relocations within the Caribbean part of the Kingdom, for example from a country (Aruba) to a public entity (Bonaire).

In addition to general data, the BRP has administrative data, such as document numbers. This is also the administrative note that there is an investigation into the accuracy of a given. If such an endorsement is included in the Bap BES, it is important that that note is also included in the BRP in the same entry. For example, users of the BRP know that there is doubt as to the accuracy of the data. Given the passive role of the Minister of BZK in the maintenance, he will not be able to investigate the accuracy of a given. Such research takes place on the side of the Bap BES, by the Executive Board. The Executive council (bestuurscollege) is given the task of promoting the proper adoption of the BRP data.³⁹ Designated administrative entities now have the same role with regard to the registration of non-residents.⁴⁰

2.3.2.3 Provision

The rules on the provision of data from the BRP (Chapter 3 of the BRP Act) apply in full to the provision of data on residents of a public entity. This means that the Minister of BZK is empowered to systematically provide from the BRP data on residents of a public entity to public entities and designated third parties⁴¹ who need this information in the performance of their (public) tasks. It is foreseen that the data on residents of a public entity previously included as non-residents will be provided to the organisations that were already authorised for this data before the entry into force of this bill. It is noted that in many cases the actuality of the data will be improved by taking over from the Bap BES in which the data is kept. For users who require historical data on registration in the Bap BES for the performance of their task, the Bap BES is the guiding principle. In addition, the data will be provided for the purposes of the facilities that determine whether and which BSN someone has and for the benefit of the digital government, such as DigiD. Municipalities and registration facilities can thus verify that the person concerned is not already registered (and thus has a BSN) and therefore is not eligible for registration again.

2.3.2.4 Supervision

The rules on supervision, transitional, penal and final provisions (Chapter 4 of the BRP Act) also apply in full to the registration of residents of a public entity in the BRP. This registration takes place in the European Netherlands and under the scope of the BRP Act. This means that the Dutch Data Protection Authority (AP) is responsible for supervising this registration and the data processing necessary for this purpose pursuant to Article 4.1 of the BRP Act. Pursuant to Article 4.3(3) of the BRP Act, the Minister of BZK will conduct an annual survey (self-assessment) into the establishment, operation and security of the basic registration. The registration of residents of a public entity in the BRP is now part of this. This provision does not concern the registration in the Bap BES, for which the Executive Board bears the responsibility. With regard to the criminal provisions, it is important that no obligations for citizens are created in the BRP Act on the basis of this bill. Thus, as with the registration of non-residents, the penalty (administrative fine)⁴² has no effect on the registration of residents of a public entity.

2.4 Amendment to Act bap BES: including the BSN in the Bap BES

This paragraph addresses the second step: the registration of the BSN in the public entity's own population administration (the Bap BES). In order to be able to register the BSN in the Bap BES, amendment of the Basic Administrations Personal Data Act BES (Bap BES Act) is necessary.

2.4.1 Introduction

³⁹ Article IV, subsection F.

⁴⁰ Article 2.78 of the BRP Act.

⁴¹ Third parties (not public bodies) who carry out activities with significant social interest are provided from the BRP which are necessary for the execution of those activities. Examples are hospitals and pension funds.

⁴² Article 4.17 of the BRP Act.

The BAP BES Act provides the legal framework for the population registrations of public entities. The BAP BES contains personal data of the residents of the public sector entities and has no registration of non-residents, as the BRP does know. As in the BRP Act, the BES Act and the underlying regulations stipulate which data is recorded, who is responsible for this and under which conditions data can be shared with government organisations and third parties. The Executive Board is responsible for the registration of residents of the relevant public entity. The Minister of BZK and the Executive Board are authorised to provide the personal data to (public) organisations that need the data. Article 10 of the BES Act lists exhaustively which categories of personal data are recorded. The BSN was not included. The BAP BES Act is amended to create a basis for the registration of the BSN in the Bap BES. The principles (objective and responsibilities) of the BES Act remain unchanged with this bill.

2.4.2 Contents

With this bill, the BSN is added to the set of data in the Bap BES. This means that the registered person's BSN will be included on his own personal list. In addition, the registered person's BSNs of their relatives (spouse, partner, child) are included on the person's list. These BSNs are derived from the personal lists of the related persons in the Bap BES. This means that – as in the BRP – only a BSN of a related person is included if that related self also has a current person list in the Bap BES. If the related person does not have a BSN, for example because he resides in Aruba, this is not an obstacle to including data about that person on the personal list of the resident of a public entity.

In addition to the addition of the BSN as data included in the Bap BES, this bill contains five substantive amendments to the BAP BES Act, which are explained below.

2.4.2.1 Copy of the personal list

On the basis of the proposed Article 17b, the person concerned will receive an overview (excerpt) of his/her personal list within four weeks of his (first) entry in the Bap BES of the Executive council (bestuurscollege).⁴³ That is why the BSN is mentioned. The BRP Act already contains such a provision for residents of the European Netherlands and non-residents.⁴⁴ Under the current BAP BES Act, registrations are only offered access to the registered data upon request. The active sending of the personal list is even more important with the introduction of the BSN; this is also the opportunity for the person concerned to be informed of his BSN and registration in the BRP.⁴⁵

2.4.2.2 ID number temporarily next to BSN and then deleted

It is foreseen that the ID number will remain temporarily next to the BSN in the Bap BES.⁴⁶ This means that both the BSN and the ID number remain in the Bap BES for some time and are provided from there to customers. The reason for this is that customers of the Bap BES will need some time to adapt their own systems to the introduction of the BSN; in that period, the ID number will have another function. The ID number is not included in the BRP and is therefore not accessible to users of the BRP.

2.4.2.3 Obligations of the Executive Board in connection with the maintenance of data on residents of a public entity in the BRP

The BAP BES Act creates the obligation for the administrative college to register residents of a public entity in the BRP and to pass on changes in the data of these residents to the Minister of BZK.⁴⁷ The proposed Article 27c(1) provides that the Executive Board shall, immediately after registration of a person as a resident of the public entity, apply to the Minister of BZK to register that person in the BRP. The Executive Board is obliged to make such a request with any new registration (birth or establishment) of a person who is not yet registered in the BRP (as a resident of the European Netherlands or as a non-resident). With this request, the Executive Board shall state the information taken from the Bap BES in the BRP: name, birth(date), gender, nationality,

⁴³ Article IV(E)

⁴⁴ Article 2.54 Act BRP.

⁴⁵ See further section 2.5.2.1 of this explanatory memorandum.

⁴⁶ Article IV(H)

⁴⁷ Article IV, subsection F.

administration number (a-number), and any provision restriction. The choice for this data set is explained in section 2.3.2.2.

With regard to persons who are registered in the Bap BES, but are already included in the BRP (⁴⁸establishment), the Executive Board is obliged to inform the Minister of BZK.⁴⁹ This is the case, for example, when someone settles on Bonaire from the European Netherlands. The statement by the Executive Board to the Minister of BZK is necessary for the latter to be able to include on the person's list of persons in the BRP the details of the residency of a public entity. Based on the information provided by the Executive council (bestuurscollege), the current data of the person concerned will be reassessed in order to agree with the Bap BES.

With regard to persons who have already been included in the BRP as a resident of a public entity, the Executive council (bestuurscollege) is obliged to notify the Minister of BZK with changes to the aforementioned data in the Bap BES. This is the case, for example, if the resident of a public entity changes his name. The Minister then implements these changes in the BRP. This involves, for example, passing on relocations to another country (including the Caribbean countries). When moving within the public sector entities, registration as a resident of a public entity remains unchanged. When moving to the European Netherlands or another country, the person concerned will be registered as a resident or non-resident respectively.

2.4.2.4 Delete the obligation to appear in the event of a declaration of removal within the public sector entity

Under this bill, the resident of a public entity is no longer obliged to appear in person when reporting a move within the public entity.⁵⁰ This means that the person concerned can also make a written declaration. In the light of the availability of reliable authentication tools, the Boards may, taking into account the degree of digitalisation of public processes, choose to also open up the digital way for the declaration of change of address, in the light of the availability of reliable authentication tools. This possibility already exists in the BRP Act for relocations within the European Netherlands since 2014.⁵¹ In view of the further development of the digital government in the Caribbean Netherlands, it is considered appropriate to remove the requirement of physical appearance there for removals within a public entity. For the declaration of departure from a public entity and for declaration of establishment, the requirement of personal appearance remains.⁵²

2.4.2.5 Introduction of mandatory self-assessment

The mandatory self-assessment is introduced as a quality tool in the BES Act.⁵³ This instrument already exists as an obligation for municipalities under Article 4.3 of the BRP Act. Like the mayor's and aldermen's colleges, the administrative colleges are required by law to conduct periodic investigations into the establishment, operation and security of the technical provision, as well as the accuracy of the data processing (administration and provision). The Executive Board must periodically send an extract of this self-assessment to the Committee on the Protection of Personal Data (hereinafter: CBP BES) for the purpose of CBP BES's task to monitor the implementation of the BES Act in the interests of the protection of privacy. The Executive Board also periodically sends an extract of the results of the investigation to the Minister of BZK. Detailed rules shall be laid down by or pursuant to a general administrative order with regard to the periodicity and conduct of the investigations and the periodicity of the transmission of the results to the CBP BES and the Minister. The starting point is that the toolbox will be used in such a way as to encourage public entities to embed the quality of the data on registered persons in their daily activities. Attention to quality becomes a continuous process.

⁴⁸ This only applies to establishment. At birth there is always (first) enrollment in the BRP.

⁴⁹ Article IV, subsection F.

⁵⁰ Article IV(D).

⁵¹ *Parliamentary documents II 2011/12, 33219, No 3.* <https://zoek.officielebekendmakingen.nl/kst-33219-3.html>

⁵² Article 13(1) and (3) of the BES Act.

⁵³ Article IV(G).

2.5 Modification Wabb: basis for BSN use by government entities and other users in the Caribbean Netherlands

This section deals with the amendment of the General Provisions Act on Social Security Number (Wabb). Amendment of that law is necessary to ensure that public entities and other users in the Caribbean Netherlands are entitled to process the BSN in the performance of their (semi-)public tasks.

2.5.1 Introduction

The Wabb sets rules on the creation, distribution, allocation and management of the BSN. In addition, general frameworks are set on the use of the BSN. Like the BRP Act and the WDO, the Wabb only applies to the European Netherlands. Under Article 2 of the Public Entities Act, Bonaire, Sint Eustatius and Saba, a regulation applies only in the Caribbean Netherlands if this is laid down by law or otherwise clearly follows from a statutory provision. If nothing is provided for in a Dutch legislation and its applicability in the Caribbean Netherlands does not follow from any other statutory provision, that scheme only applies to the European part of the Netherlands. This means that the Wabb⁵⁴ prevents government entities and third parties in the Caribbean Netherlands from processing the BSN in the performance of their (semi-)public tasks. As indicated in section 2.1, it is desirable that these organisations also be able to process the BSN in order to improve the (digital) services to citizens. For the use of public login tools, such as DigiD, processing of the BSN is necessary.

2.5.2 Contents

With this bill, the Wabb creates a basis for the processing of the BSN by government entities and other users in the Caribbean Netherlands. The Wabb is also declared applicable in public sector entities, by explicitly stating this in Chapter 5a (new) of the Wabb.⁵⁵ This chapter also determines how certain parts of the Wabb will apply in the context of the Caribbean Netherlands.

2.5.2.1 To get a BSN

The Minister for BZK is responsible for granting the BSN to residents of a public entity.⁵⁶ The granting will be made when the person concerned is registered in the BRP by the Minister of BZK (see section 2.3). In that regard, the grant of the BSN to residents of a public entity is not different from the already existing grant to non-residents. The Executive council (bestuurscollege) will thus only be responsible for registering the BSN in the Bap BES, not with the allocation of the number. Article 9 of the Wabb states that the administrative entity granted by the BSN informs the citizen concerned. However, in the case of the registration of a resident of a public entity in the BRP, it is desirable that the administrative college and not the Minister of BZK take care of this notification.⁵⁷ The reason for this is that the granting of the BSN is, by definition, linked to the registration in the Bap BES and the Executive Board is already responsible for informing the citizen about that registration. The notification of the granting of the BSN will also be included, so as to prevent the citizen of the Dutch government from receiving two notices about his registration.

2.5.2.2 Use BSN

Chapter 4 of the Wabb, which concerns the use of the BSN by public entities and third parties, remains unchanged and, on the basis of the new Chapter 5a, will apply in full to the organisations that use the BSN in their implementation processes (users) in the Caribbean Netherlands. This means that users in the Caribbean Netherlands have access to the facilities of the BSN system, such as the number register and the management facility BSN (BV-BSN). Pursuant to Article 12 of the Wabb, the user must ensure that the BSN relates to the person whose data is processed (the so-called obligation to erase). In order to determine this, the user has access to the BV-BSN. From the BV-BSN a number of identifying data is provided, so that – possibly together with the identity document of the data subject – it can be determined whether the BSN belongs to the person concerned. The BV-BSN also offers the possibility to verify whether the document with which the

⁵⁴ Article 1(d) in conjunction with Article 10 Wabb.

⁵⁵ Article I(B)

⁵⁶ The proposed Article 21c(2) Wabb.

⁵⁷ The proposed Article 21d Wabb.

data subject identifies himself is a valid identity document.⁵⁸ In the Caribbean Netherlands, in addition to travel documents, someone can also identify themselves with the BES ID cards. This bill also provides for the inclusion of the BSN on this ID card BES (see section 2.7). However, unlike travel documents, it is not possible to check the validity of the BES ID card on the basis of the BV-BSN. The reason for this is that there is no central register for the ID cards BES to determine the validity of a document.⁵⁹ If a person identifies with the ID card BES, this means that this means of control is missing in the BV BSN. This does not mean that in such a case the user cannot fulfil the obligation of Article 12 of the Wabb. With the help of identifying data provided from the BV-BSN and possibly based on security features of the identity document, the user can determine that the BSN relates to the person whose personal data he processes.

2.5.2.3 Supervision and data protection

Chapter 5 of the Wabb lays down rules on the supervision and protection of personal data. This chapter will apply in full to the processing of the BSN by organisations in the Caribbean Netherlands. In the European Netherlands, the Dutch Data Protection Authority (AP) is responsible for supervising the allocation and use of the BSN pursuant to Article 46 of the UAVG. For the supervision of the use of the BSN by organisations in the Caribbean Netherlands, the Committee on the Protection of Personal Data is responsible for this under Article 44 of the Personal Data Protection Act BES. Section 3.3 deals with privacy legislation applicable in the Caribbean Netherlands.

2.6 Amendment of the Digital Government Act: extension of scope to the Caribbean Netherlands

This section deals with the amendment of the Digital Government Act (hereinafter: WDO). Amendment of the WDO is necessary to enable the use of public login funds with authorities in the Caribbean Netherlands.

2.6.1 Introduction

The WDO regulates that Dutch citizens and companies can log in safely and reliably with the (semi-) government. This means that citizens are given electronic means of identification (eID) with a substantial or high level of reliability. These identifiers give public service providers more certainty about one's identity. The WDO also requires open standards. The scope (applicability) of the WDO is currently limited to the European Netherlands.⁶⁰ A public identifier (such as DigiD) may only be used by organisations that fall within the scope of the WDO; these are European Dutch administrative entities and organisations designated on the basis of the WDO.⁶¹

According to the *principle only or explain*, the⁶²WDO is to apply in full to public entities on the basis of this bill, except for those parts for which an explicit exception is necessary. This is also in line with the objective of achieving an equivalent level of (digital) services in the Caribbean Netherlands. The absorption capacity of the islands is not in itself a reason to exclude certain parts of the WDO in advance.

With this bill, a chapter (7a) is inserted in the WDO after chapter 7 that deals with the application of the WDO in the Caribbean Netherlands.⁶³ This chapter contains definitions necessary for the operation of the WDO in the Caribbean Netherlands and determines which articles do *not* apply there.

It is important that the WDO has no obligation to provide electronic services. This means that – even though digital government services become available in the Caribbean Netherlands – non-electronic ("paper") services remain possible. This remains at the discretion of the service provider itself.

2.6.2 European law context: eIDAS

⁵⁸ These are documents as referred to in Article 1, paragraph 1, point 1°, 2° or 4°, of the Law on the Obligation of Identification. This includes the passport, the Dutch identity card and the driving licence.

⁵⁹ There is such a register for passports and Dutch identity cards.

⁶⁰ See paragraph 2.1 of this explanatory memorandum.

⁶¹ Article 8 of the WDO.

⁶² See paragraph 1 of this explanatory memorandum.

⁶³ Article VI.

Although the Caribbean Netherlands is politically part of the Netherlands, they are islands under EU law Lands and Territories Overseas (OCT). In the Caribbean Netherlands, only the Fourth Part of the EU Working Convention on the Association of Overseas Countries and Territories applies.⁶⁴ Here it is important that the eIDAS Regulation⁶⁵ thus has no effect for the Caribbean Netherlands. This is explained in more detail in this section. Moreover, the GDPR does not apply in the Caribbean Netherlands, this is explained in more detail in chapter 3 (privacy aspects).

The eIDAS Regulation regulates the cross-border use of electronic identification means and trust services between the Member States of the European Union. The Regulation applies since 1 July 2016 to trust services including their supervision and, since 18 September 2018, to the mandatory recognition of electronic identification means from other Member States. The WDO now lays down rules on access by citizens and businesses to electronic services of service providers in (European) Netherlands and is in line with the frameworks set out in the eIDAS Regulation, including as regards the confidence levels of login resources. However, this does not in itself prevent the WDO from being applied to the Caribbean Netherlands. The WDO concerns independent national legislation whose scope is not territorially limited by the eIDAS Regulation. However, the fact that the eIDAS Regulation does not apply in the Caribbean Netherlands means that even after this proposal has the force of law, there remains a difference between the Caribbean and the European Netherlands in the (legal) framework for the (mandatory acceptance) of electronic identification means and trust services. This difference is first and foremost that service providers in the European Netherlands are obliged to accept recognised means and trust services from other Member States for cross-border electronic authentication by citizens and businesses. This acceptance obligation does not apply to service providers in the Caribbean Netherlands. Secondly, it is not possible to register non-EEA login funds and trust services within the eIDAS system. This means that service providers in other EU Member States cannot be required to accept any future login tools and trust services from the Caribbean Netherlands.

2.6.3 Contents

This section specifies per chapter of the WDO whether and how it will apply in the Caribbean Netherlands. In doing so, only the special or deviating rules for the Caribbean Netherlands are explained in more detail. For the rules that will apply in full to the Caribbean Netherlands, a substantive explanation is referred to the explanatory memorandum to WDO for the sake of shortness.⁶⁶

2.6.3.1 Definitions and scope (Chapter 1)

Article 1 of the WDO contains the definitions. As far as terminology is concerned, the WDO aligns as much as possible with the eIDAS Regulation and the implementing regulations adopted on the basis thereof. The fact that this regulation does not apply in the Caribbean Netherlands does not prevent the use of terminology for the introduction of the WDO in the Caribbean Netherlands. However, one of the definitions requires adaptation for the Caribbean Netherlands. The definition of 'business or organisational means' contained in Article 1 of the WDO is now in line with companies and legal persons as referred to in the Trade Register Act 2007. Because this law applies only in the European Netherlands, this definition is limited to companies and legal entities in the European Netherlands. The definition is extended to the Caribbean Netherlands by including companies and legal entities within the meaning of the Trade Register Act 2009 BES.⁶⁷ For the rest, the definitions in Article 1 of the WDO for Caribbean Netherlands apply in full.

Article 2 of the WDO governs the scope of the WDO, primarily tailored to the public and semi-public sectors, which use the generic digital infrastructure. For the application in the Caribbean Netherlands, this article is extended in two parts. Article 2(1) now limits the scope of the WDO to administrative entities within the meaning of the General Administrative Law Act (hereinafter: Awb). It is expounded that the WDO also applies to public law entities in the Caribbean

⁶⁴ Articles 198 to 203 of the EU Working Convention and Annex II of the EU Working Convention

⁶⁵ Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, OJ L 257, 28.8.2014.

⁶⁶ *Parliamentary documents II 2017/18, 34972, No 3.*

⁶⁷ Article VI, the proposed Article 22c(1) WDO.

Netherlands.⁶⁸ This also means that where Article 1 of the WDO (comprehensive provisions) refers to administrative entities, now that administrative entities in the Caribbean Netherlands are also referred to. For the definition of administrative entity, Article 2 of the Act on Administrative Jurisdiction BES. In addition, Article 2(2) of the WDO is extended. This Article refers to courts. Unless otherwise specified, they are subject to the same rights and obligations under the WDO as for administrative entities and designated organisations. For the purposes of application in the Caribbean Netherlands, courts shall mean: the courts of first instance, the common Court of Justice and the Supreme Court.⁶⁹ For the rest, Article 2 of the WDO for Caribbean Netherlands applies in full. This means, among other things, that the Minister of BZK can also designate organisations outside the public domain in the Caribbean Netherlands. Indication means that the rules of the WDO on reliable logging in also apply to the organisation concerned.

2.6.3.2 Standards (Chapter 2)

Article 3 obliges organisations to apply designated standards. Standards are agreements on e.g. electronic data exchange, accessibility or security, laid down in so-called specification documents, which describe what data looks like, what it means and how it can be exchanged. This makes it possible to automate (administrative) processes in an efficient, safe and reliable manner and to achieve independence of ICT system suppliers. These standards will apply in full to organisations (service providers) in the Caribbean Netherlands.

2.6.3.3 Generic digital infrastructure (Chapter 3)

Article 4 provides the basis for the adoption of rules on the functioning, reliability and security of access to electronic services by administrative entities and designated organisations. The obligations under this Article shall apply in full to the administrative entities and designated organisations in the Caribbean Netherlands. It concerns the obligation to comply with the established standards of information security. In order to check whether the service providers actually meet the requirements, administrative entities and designated organisations should regularly submit a statement from an auditor to the Minister of BZK.

Article 5 of the WDO concerns ministerial responsibility for the management of the Generic Digital Infrastructure (GDI). The article contains an indication of eID-related facilities, which also includes DigiD. This article is fully applicable in the Caribbean Netherlands. For the e-driving licence, this login tool is not available to residents of the Caribbean Netherlands. Laying down rules on this is an island matter and thus not subject to national legislation. Moreover, the valid driving licence in the Caribbean Netherlands does not currently contain a chip, so it is not possible to link an e-functionality as has been realised for the European Dutch driving licences. This means that only persons who hold a European Dutch e-driving licence can log in to authorities in the Caribbean Netherlands.

2.6.3.4 Access to electronic services (Chapter 4)

Pursuant to Article 6(1) of the WDO, for services requiring substantial or high authentication at the level of assurance, resources that have at least the level of reliability required for the service in question are to be used. This is no different for digital services in the Caribbean Netherlands. In principle, an administrative entity or designated organisation determines which level of assurance it considers appropriate for which type of service. However, when determining the level of trust, service providers must comply with the criteria for assurance levels for authentication in electronic services to be set by ministerial regulation. This also applies to service providers in the Caribbean Netherlands.

Article 7 of the WDO requires service providers to grant access to their electronic services by authorised means (obligation of acceptance). Citizens who hold an authorised product thus have a right to use it. This also applies to digital services in the Caribbean Netherlands, on the understanding that there is no obligation for service providers in the Caribbean Netherlands to

⁶⁸ Article VI, the proposed Article 22c(2) WDO.

⁶⁹ Article VI, the proposed Article 22c(3) WDO.

accept funds from other EEA Member States.⁷⁰ For the use of login funds and trust services from other EEA Member States, it is important that the eIDAS Regulation does not apply in the Caribbean Netherlands. As explained in section 2.6.2, unlike service providers in the Caribbean Netherlands, service providers in the Caribbean Netherlands are not obliged to accept these services and resources. Because, conversely, any Caribbean Dutch resources and services cannot be made compulsory in other EEA Member States, reciprocity is lacking here. For this reason, it was chosen not to introduce the acceptance obligation for login funds and trust services from other EEA Member States into the Caribbean Netherlands. This means that the login facilities will become available in the Caribbean Netherlands,⁷¹ but that an organisation is authorised and not obliged to accept a foreign login device.

The remaining articles of Chapter 4 will apply in full to the Caribbean Netherlands. These are the provisions on (authorisation of) public and private identification,⁷² the use of those means (Article 10) and the provision of electronic services to businesses.⁷³ The application of Article 8 means that government entities in the Caribbean Netherlands are entitled to use DigiD in their services, even if there is no acceptance obligation. With regard to Article 15, the Caribbean Netherlands is concerned with the fact that these are funds for companies as referred to in the Trade Register Act 2009 BES. This is in line with the amended definition of “business and organisational means” (see section 2.3.1). In addition, Article 15(8) is excluded from operation in the Caribbean Netherlands. This concerns the acceptance obligation for company login funds from other EEA Member States.⁷⁴

2.6.3.5 Personal data protection (Chapter 5 of the WDO)

Article 16 of the WDO provides an explicit basis for ministers, administrative entities and designated organisations to process personal data, including the BSN, insofar as this is necessary for the proper performance of their tasks and obligations under the WDO. This article will apply in full to (service providers in) Caribbean Netherlands. This concerns data processing in the context of authentication and the relevant facilities,⁷⁵ and in the context of access to electronic services at the levels of assurance substantial and high. In order to be able to adequately carry out activities in the context of prevention, recognition and recovery of abuse and improper use, it is also necessary to process personal data.

2.6.3.6 Compliance (Chapter 6 of the WDO)

The monitoring of compliance with the standards to be applied, the obligation to accept and classify and the use of public funds in the public domain by local authorities is carried out through regular (inter-administrative) lines (Article 17 of the WDO). For the Caribbean Netherlands, the Minister of BZK is responsible for monitoring compliance with Articles 3, 6, 7, 8(1) and 15 of the WDO. The other provisions of this chapter (Articles 18 and 19 of the WDO) apply in full to the Caribbean Netherlands.

2.6.3.7 Financial provisions (Chapter 7 of the WDO)

Chapter 7 of the WDO lays down rules on the fees for a public identification tool and on the passing on of costs to administrative entities and designated organisations. In this context, it is important that no different rules are provided for (service providers in) Caribbean Netherlands with regard to the fee and pass-on of costs.

2.6.3.8 Transitional provisions (Chapter 8 of the WDO)

Taking into account the absorption capacity of the islands and also the differences between the islands, a phased entry into force of the WDO in the Caribbean Netherlands is foreseen. This means that certain parts of the WDO – such as public login tools for citizens – can enter into force rather than other components. It is also possible to differentiate – as in the European Netherlands

⁷⁰ The proposed Article 22d WDO.

⁷¹ Article 5 of the WDO.

⁷² Articles 8 and 9 of the WDO.

⁷³ Articles 11 to 14 of the WDO.

⁷⁴ The proposed Article 22d WDO.

⁷⁵ Article 5(1) of the WDO.

– per public entity and by organisation(s) with regard to its entry into force, by means of a so-called connection schedule.

2.7 Amendment of the Identification Cards Act (BES)

This section deals with the amendment of the BES Identity Cards Act (hereinafter: WIDk BES). Modification of the WIDk BES is necessary to include the BSN on the ID card BES. It is desirable that the BSN be included on the ID card so that the number for the citizen can always be consulted in a low-threshold manner. In addition, inclusion of the BSN on the ID card for service providers is helpful in determining that the BSN belongs to the person concerned. In Article 2 of the WIDk BES, which regulates the data on the ID card, the description of the ID number (sub-e) is replaced by the BSN.⁷⁶ The ID number is therefore no longer included on new ID cards BES, the BSN replaces it. It is also proposed that the ID cards BES issued prior to the entry into force of this bill will remain valid.⁷⁷ This is done by establishing two models that are (valid) simultaneously in circulation; ID cards with BSN and ID cards with ID number. The ID card BES is valid for five years.⁷⁸ This means that until five years after the entry into force of this bill, if adopted and raised to law, ID cards BES with the ID number and without the BSN will remain in circulation. It is not desirable to require citizens to purchase a new document before the period of validity of the old document has expired. In addition to an ID card BES, residents of the Caribbean Netherlands can also have a passport and or Dutch identity card (NIK). These identity documents will also contain the BSN of the data subject, but this does not require any modification of the relevant legislation. It is already apparent from the Passport Act that, if the person concerned has a BSN, those documents must contain that number.⁷⁹

3. Privacy aspects

3.1 Introduction

This bill has implications for the privacy of the residents of the Caribbean Netherlands: persons who are or are registered in the basic personal data administration. There is an extension of the registration of data by registering a new group of persons in the BRP (residents of a public entity, see section 2.3) and by incorporating a new information (the BSN, see sections 2.3 and 2.4). There is also an extension of the provision of data to administrative colleges and the Minister of BZK, necessary for the granting and registration of the BSN. Finally, the introduction of the WDO(facilities), the use of the BSN by organisations in the Caribbean Netherlands and the inclusion of the BSN on the ID card BES, has an impact on the privacy of data subjects (see sections 2.5, 2.6 and 2.7). This chapter addresses these consequences in more detail. This first provides an overview of the data processing and explains which privacy regimes apply in the European and Caribbean Netherlands respectively (section 3.2). The proposed data processing is then assessed in the light of the Constitution, the ECHR, in so far as it applies. The GDPR and the Personal Data Protection Act BES (section 3.3 and beyond).

3.2 Applicable privacy regimes and overview of data processing

3.2.1 Constitution and ECHR

In both the Caribbean and the European Netherlands, the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) applicable. Under Article 10(1) of the Constitution and Article 8 of the ECHR, everyone has the right to respect for their privacy. However, according to Article 10(1) of the Constitution and Article 8(2) of the ECHR, the right to privacy may be restricted by or under the law. Article 8 of the ECHR requires this restriction to be foreseeable and necessary in a democratic society in the interests of the national security, public security or economic well-being of the country, the prevention of malpractices and criminal offences, the protection of health or morality or for the protection of the rights and freedoms of others. The outcome of the examination of this bill against

⁷⁶ Article II, point A.

⁷⁷ Article II, point C.

⁷⁸ Article 3 of the Act on Identity Cards BES

⁷⁹ Article 3(4) of the Passport Act.

these requirements for a justified breach of Article 10 of the Constitution and Article 8 of the ECHR is explained in Section 3.3.

3.2.2 GDPR and Personal Data Protection Act BES

The public sector entities have the status of Overseas Countries and Territories (OCTs) vis-à-vis the European Union, so EU legislation does not in principle apply to Bonaire, St. Eustatius and Saba. This means that the GDPR does not apply in the Caribbean Netherlands. For this bill, the GDPR therefore only applies to the data processing that takes place in the European Netherlands, including the transmission of data from the European Netherlands. This concerns the granting of the BSN, the registration of residents of a public entity in the BRP and the provision of data to organisations in the Caribbean Netherlands, including the Executive council (bestuurscollege). For the data processing that takes place in the Caribbean Netherlands, such as the use of a public login device by an authority in the Caribbean Netherlands, the Wbp BES applies. An important exception to this is the processing in the context of the maintenance and provision of the Bap BES. The BAP BES Act has its own privacy regime, so that the registration of the BSN in the Bap BES does not fall under the Wbp BES.⁸⁰ For the European Netherlands, the processing of data within the framework of the BRP does not fall under the UAVG.⁸¹

Table 1: overview of data processing and applicable privacy regimes.

<i>Processing</i>	<i>Applicable privacy regime</i>	<i>Paragraph in this explanatory memorandum</i>
The registration and maintenance of data on residents of a public entity in the BRP by the Minister of BZK.	Article 8 ECHR Article 10 Constitution AVG Law BRP	2.3
The grant of the BSN by the Minister of BZK.	Article 8 ECHR Article 10 Constitution AVG UAVG	2.5
The announcement of the BSN by the Minister of BZK to the Executive Board	Article 8 ECHR Article 10 Constitution AVG Law BRP	2.3
The registration of the BSN in the Bap BES by the Executive council (bestuurscollege)	Article 8 ECHR Article 10 Constitution Law bap BES	2.4
The communication of a new registration and a change of information by the Executive Board to the Minister of BZK	Article 8 ECHR Article 10 Constitution Law bap BES	2.4
The processing of the BSN by organisations in the Caribbean Netherlands	Article 8 ECHR Article 10 Constitution Wbp BES	2.5.2.2
The processing of personal data in the context of digital services to citizens and businesses in the Caribbean Netherlands	Article 8 ECHR Article 10 Constitution Wbp BES	2.6

⁸⁰ Article 2(2) of the Wbp BES.

⁸¹Article 2(2) of the UAVG.

(WDO)		
The inclusion of the BSN on the ID card BES	Article 8 ECHR Article 10 Constitution Wbp BES	2.7

3.3 Review of the Constitution and the ECHR

The extension of the registration and the provision of personal data constitutes a breach of privacy. It is required that an interference with privacy meets the requirement that the interference is "by law". This has been met. According to the case law of the European Court of Human Rights, a restriction may be provided for in different ways 'by law': this can be a law in the material sense, a policy rule or even a rule formed in case law. The regulation of data processing takes place for the most part in this bill itself: the amendment of the Act BRP, Wet bap BES, Wabb, WDO and WIDk BES. As a result, according to the case-law referred to above, these data processing operations are 'by law'.

As regards the requirement of foreseeability, this bill contains a clear regulation regarding the purposes of data processing, the personal data that can be processed (registered and provided), the authorities responsible for this and the rights of data subjects. In this context, for the sake of shortness, reference is made to the substantive substantiation of the purposes of data processing in Chapter 2 of this Explanatory Note.

The violation of the law contained in Article 8 of the ECHR must also be necessary in a democratic society in relation to a number of specified interests. In that regard, Article 8(2) of the ECHR refers to the importance of national security, public security or the economic well-being of the country, the prevention of malpractices and criminal offences, the protection of health or morals and the protection of the rights and freedoms of others. This requirement is further specified in ECHR case law with the requirement of an urgent social need. Whether this is the case is determined on the basis of a number of criteria. For example, in order to be necessary, a measure must be relevant to achieve the objective pursued and the proportionality and subsidiarity requirements must be met. In order to substantiate the pressing social need, *which justifies* the interference, reference is made to Chapter 2 of this explanatory memorandum for the relevant parts of this bill. Such interference complies with the proportionality and subsidiarity requirements. Section 2.2 sets out alternatives for achieving the objective of bringing the digital services of the (semi) government in the Caribbean Netherlands to an equivalent level as in the European Netherlands. It is argued that the use of a personal identification number and the processing of personal data are necessary for this purpose. The alternatives outlined – the use of a 'own' number and login tool – are no less burdensome from a privacy point of view.

3.4 Review of the GDPR

This section deals with the assessment of the legislative proposal against the GDPR. As described in section 3.2, the GDPR only applies to data processing carried out in the European Netherlands and to the transmission of data from the European Netherlands. It is thus about: the registration and maintenance of residents of the public entities in the BRP by the Minister of BZK, the grant of the BSN by the Minister of BZK and the communication of the BSN by the Minister of BZK to the Executive Board.

3.4.1 Data sharing with organisations outside the European Union

In the provision of the BSN and other personal data from the European Netherlands to organisations in the Caribbean Netherlands, including the administrative colleges, the speciality is that in the legal sense there is a transfer of personal data to a country or territory outside the European Union. It is necessary that an appropriate level of protection of the privacy of the data subjects is ensured in that country or territory. Whether this is the case should be assessed on the basis of the provisions in Chapter V of GDPR regarding transfers of personal data to third countries or international organisations. This is the case in the Caribbean Netherlands. In the public sector entities of the Caribbean part of the Netherlands, the appropriate level of protection is guaranteed

by the Wbp BES and – as regards processing under the Bap BES – in the Bap BES Act.⁸² This legislation and its implementation complies with the requirements and safeguards for the protection of privacy as laid down in the Constitution (Article 10), the ECHR (Article 8) and the Convention 108. This is explained in more detail below. It then discusses the specific measures taken under this bill when transferring data, necessary for the introduction of the BSN and the functioning of the digital government facilities.

3.4.1.1 Appropriate regulatory safeguards and independent supervision in the Caribbean Netherlands

In principle, the transfer of personal data is only permitted if appropriate safeguards are provided and data subjects have enforceable rights and effective remedies. Firstly, it is important that the Caribbean Netherlands has its own privacy legislation that complies with the Constitution, the ECHR⁸³ and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention-108). This Convention lays down rules on the automated and non-automated processing of personal data. The Additional Protocol to this Convention of 8 November 2001,⁸⁴ which the Netherlands has also ratified, obliges the Contracting Parties to establish one or more independent supervisory authorities, which, in addition to investigative powers, also have powers to bring legal proceedings or infringements to the attention of the courts. Any person may also complain to that authority of any breach of his or her rights. This Convention and its Protocol shall also apply in public sector entities.⁸⁵ Consequently, in the Wbp BES and in the Bap BES Act, the Committee on the Protection of Personal Data Protection (CBP BES) has been set up as an independent supervisor and the supervisory powers have been established. CBP BES supervises the processing of personal data in the Caribbean Netherlands, as the AP does in the European Netherlands. It has therefore been designated in the Bap BES Act as the supervisor of the implementation of that law.

In addition to supervision, the main provisions of the Wbp BES on the lawful handling of personal data can be summarised as follows. In the first place, personal data may only be processed in accordance with the law and in a proper and careful manner. In addition, personal data may only be collected for specific, pre-defined and justified purposes. And then this data will only be further processed for purposes that are compatible with it. The person whose personal data is processed must at least be aware of the identity of the organisation or person processing this personal data and of the purpose of the data processing. Finally, data processing must be adequately secured. These principles thus correspond to what applies to the European Netherlands under GDPR and UAVG. The Wbp BES and Wet Bap BES thus provide – within the framework of the Constitution, the ECHR and Convention 108 – enforceable rights and effective remedies for the protection of privacy guaranteed by the presence of an independent regulator (CBP BES).

3.4.1.2 Specific safeguards relating to the introduction of the BSN and digital public services

In addition, this bill and its implementation propose specific measures to protect the privacy of data subjects in order to ensure the appropriate level of protection. These are not only legal, but also technical and organisational safeguards for the careful and lawful processing of personal data.

The introduction of the BSN and the facilities of the digital government in the first place already benefit privacy protection in the Caribbean Netherlands. From now on, we will work with a unique and informationless number (BSN) and with login tools that meet the same standards as in the European Netherlands (such as DigiD). The personal number currently in use in the Caribbean Netherlands – the ID number – contains, other than the BSN, information about the person to whom the number was issued: the date of birth and a serial number that can be traced back to the island of registration. Moreover, due to the small scale of the islands, it is often predictable what the ID number of a person is, when the date of birth is known. All this is undesirable from a privacy point of view because numbers that contain information about the person in question, such

⁸² *Stb.* 2010, 349.

⁸³ As explained in section 3.2, the Constitution and the ECHR also apply in the Caribbean Netherlands. The same applies to Convention 108.

⁸⁴ *Trb.* 2003, 122; *Dutch text Trb.* 2003, 165.

⁸⁵ Parliamentary documents II 2009/10, 32161, No 3.

as the date of birth, invite the use of this information. Also, by using the number personal data are made known without a clear reason for doing so. Replacing the ID number with the BSN removes these concerns. The availability of the digital login tools (Digital Government Act) in itself already ensures a better protection of privacy in the (digital) services to citizens and businesses. These login tools must, on the basis of this bill, comply with the European Dutch (AVG) standards.⁸⁶

Secondly, this bill strengthens the privacy rights of all those enrolled in the Bap BES by introducing an active duty of information for administrative colleges. On the basis of the proposed Article 17b, the person concerned will receive an overview (excerpt) of his/her personal list within four weeks of his (first) entry in the Bap BES of the Executive council (bestuurscollege). That is why the BSN is mentioned. The BRP Act already contains such a provision for residents of the European Netherlands and non-residents.⁸⁷ The introduction of the mandatory self-assessment, as it also exists in the European Netherlands, is a specific measure in this bill to protect the privacy of registered persons.⁸⁸ Part of this self-assessment are the information security questions. These questions concern the organisation and security of the systems in which the personal data are stored. The results of the annual self-assessment are shared by the Executive Board with the Minister of BZK and the CBP BES. In this context, it is also important that this bill also amends the Wbp BES as regards the processing of personal numbers. The amended Article 24 makes it clear that from now on rules on BSN use always require a specific formal legal basis. A similar amendment to the UAVG has been proposed for the European Netherlands in the Data Protection Gathering Act.⁸⁹ Harmonisation is also taking place on this point.

Thirdly, it is important here that the transfer of personal data on the basis of this bill is limited to persons about whom the administrative colleges already process data, in the BES basic administration. After all, the board already has the data of its own residents and bears the responsibility for the maintenance of those data in the Bap BES. The BRP Act, Article 3.12, already has an explicit basis for sharing BRP data with authorities in the Caribbean part of the Kingdom. The BRP Decision, Article 43, further elaborates this basis for the sharing of BRP data for the maintenance of the Bap BES. In this context, personal data are thus already being exchanged between the BRP and Bap BES in order to promote the alignment between the BRP and the basic administrations. In addition, a personal number is also exchanged with the a-number. The transfer of personal data (exchange between basic administrations) is therefore not new. This bill adds the BSN to the set of data that are already exchanged about these persons (residents of public entities) under the BRP Act.

Fourthly, under this bill, all registered residents of the Caribbean Netherlands are registered in the BRP. The privacy rights of the BRP Act will also apply to this new category of registered persons, as regards the registration of their data in the BRP.⁹⁰ For example, each registered person has the right to access the data recorded about him or her and can request an overview of the transmissions of his personal data (protocol overview). The rights of data subjects under the BRP Act are thus not limited to persons living in the European Netherlands.

Finally, specific safeguards are also provided for the implementation of this bill in technical and organisational terms. It is foreseen that the exchange of personal data will be carried out through the technically secure channels already used in the European Netherlands for the registration of non-residents in the BRP and for the processing of the BSN (such as the number register and the management facility BSN). These facilities comply with the Baseline Information Security Government (BIO): the basic standards framework for information security at all levels of government.

⁸⁶ See section 2.6.3.2.

⁸⁷ The proposed Article 17b Wet Bap BES, see section 2.4.1.

⁸⁸ The proposed Article 30a Bap BES, see paragraph 2.4.5.

⁸⁹ Amendment to the General Data Protection Regulation Implementing Act and some other laws related to streamlining and updating data protection law (Data Protection Collection Act). *Parliamentary documents II*, 2022/23, 36264, No 2.

⁹⁰ The proposed Article 2.88.

In view of the above, the transfer of personal data necessary for the implementation of this bill is based on Article 46(1) and (2) (a) of the GDPR: transfer on the basis of appropriate safeguards, located in a legally binding and enforceable instrument between public authorities or entities. This is the interplay of regulations aimed at protecting the privacy of citizens: the BAP BES Act, the BRP Act and the Personal Data Protection Act BES (Wbp BES). These regulations comply with the privacy protection frameworks laid down in the Constitution, the ECHR and Convention 108. In addition, this bill and its implementation propose specific measures to protect the privacy of data subjects. In addition to legal, technical and organisational safeguards for the careful and lawful processing of personal data.

3.4.2 Rights of data subjects

Pursuant to Article 15 of the GDPR, the data subject has the right to obtain confirmation as to whether or not to process personal data concerning him or her and, where that is the case, to obtain access to those data and information about the processing (right of access). The registration of residents of a public entity in the BRP is a special feature that it is not a so-called source registration, as is the case with residents (European Netherlands) and non-residents. For residents of a public entity, the Bap BES is the source registration and the BRP is used for the purpose of the functioning of the BSN system and the facilities of the digital government. To this end, it is necessary that all BSNs are included in the same registration, so that that registration provides confirmation whether someone has a BSN. This special nature of this new BRP category means that the data subject's rights with regard to the registration of data are partly carried out via the Bap BES. The exercise of these rights for the Bap BES works directly in the BRP, insofar as it concerns data that is included in the BRP about the resident of a public entity. As explained, the citizen cannot request registration or modification of data in the BRP himself. This prevents the BRP from being able to deviate from the Bap BES (for example, if the citizen only requests the adaptation of BRP data). Furthermore, the citizen of the Minister of BZK does not receive written notification of the registration in the BRP, as is the case with residents and non-residents. The reason for this is that the citizen is already informed by the executive council (bestuurscollege) of the registration (in the Bap BES) and the inclusion of the BSN in it.⁹¹ Sending a second notification concerning the same tender is not considered appropriate. The citizen can, however, ask the Minister of BZK for access to his registration in the BRP as a resident of a public entity.⁹² The request is made through the Executive Board. The right of citizens to stop the provision of their own data to certain third parties (so-called provision restriction) and the possibility of deletion of certain data are also fully applicable to the registration of residents of a public entity. The implementation of these rights does not lead to possible inconsistencies between the BAP BES and the BRP or to unnecessary duplication of information to citizens.

The data subject does not have the possibility to stop the registration or provision of the BSN and the data to be included in the BRP. The right to restriction of processing (Article 18 of the GDPR) applies in a general sense that this right cannot be invoked in relation to the data processing in the BRP. The basis for limiting this right in the BRP Act is Article 23(1)(e) of the GDPR. The essential function of the basic registration as a central and primary source of information for the public authorities prevents the right to restriction of processing from being invoked, since this would seriously impede the flow of information within the government, whereas that data is precisely necessary for the proper performance of the tasks of the public entities.⁹³

With regard to the right to information, it is also⁹⁴ associated with what is already laid down in the BRP in the general sense. For the registration of data (including the first registration), the citizen is informed of this. The transmission of data shall be carried out in accordance with the method used in the systematic transmission of data by the Minister of BZK, with no individual notification per communication. In general, the data processing in the BRP is regulated exhaustively by law and therefore the registered person can already infer from the regulations which data can be kept about him, from which sources this data can be derived, how long it is kept, to whom and for what

⁹¹ Article 17b of the Bap BES Act.

⁹² The proposed Article 2.88(2) of the BRP Act

⁹³ Parliamentary documents II, 2017/18, 34939, No 3.

⁹⁴ Article 14 of the GDPR.

purpose it can be provided and what rights he has (such as the right to access). The re-provision of the information referred to here in each communication of a given would disproportionately affect the performance of the basic registration work which does not outweigh the expected strengthening of the information position that the citizen already has.⁹⁵

For the sake of completeness, it is also noted that this bill does not regulate the processing of special personal data as referred to in Article 9 of the GDPR. There is also no automated decision-making as referred to in Article 22 of the GDPR.

3.4.3 Purpose binding

The purpose limitation principle means that personal data must be collected for specific, explicit and legitimate purposes and that they may not subsequently be further processed in a manner incompatible with those purposes. The principle of data minimisation requires that personal data be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This means that it is necessary to identify the specific purposes for which it is already collected at the stage of the collection of the data. This bill contains a clear regulation regarding the purposes of data processing, the personal data that can be processed (registered and provided) and the authorities responsible for this. For reasons of substance, reference is made to Chapter 2 of this Explanatory Note. In line with the principle of data minimisation, only a limited set of personal data is included in the BRP, the address given, for example, is not taken over. This is the set that is minimally necessary for the functioning of the facilities of the digital government, such as DigiD. This dataset is explained in more detail in section 2.3.2.2. With regard to the introduction of the WDO(provisions), reference is made in this context to Chapter 4 of the explanatory memorandum to that law, given that the conclusions drawn there for the Caribbean Netherlands are identical. As regards the use of the BSN by organisations in the Caribbean Netherlands, for the same reason, for the sake of shortness, reference is made to Chapter 8 of the Explanatory Memorandum to the Wabb. Both the WDO and the Wabb are declared to apply *mutatis mutandis* to the Caribbean Netherlands.

3.5 Review of the Personal Data Protection Act BES

The Wbp BES applies to the data processing carried out under the responsibility of organisations in the Caribbean Netherlands. The exception is the data processing carried out in the context of the maintenance of the basic records; for this purpose, the BAP BES Act has its own privacy regime. Within the limits of this bill, the Wbp BES thus applies to the processing of the BSN by organisations in the Caribbean Netherlands, the processing of personal data in the context of digital services to citizens and companies in the Caribbean Netherlands (WDO) and the inclusion of the BSN on the ID card BES.

The Wbp BES is based on the former Dutch Personal Data Protection Act (Wbp) and has entered into force since 10 October 2010. The Wbp BES also determines the tasks and powers of the CBP BES. The CBP BES has been established as an independent supervisor in accordance with the Wbp BES.

The main provisions of the Wbp BES on the lawful handling of personal data can be summarised as follows. In the first place, personal data may only be processed in accordance with the law and in a proper and careful manner. In addition, personal data may only be collected for specific, pre-defined and justified purposes. And then this data will only be further processed for purposes that are compatible with it. The person whose personal data is processed must at least be aware of the identity of the organisation or person processing this personal data and of the purpose of the data processing. Finally, data processing must be adequately secured. These principles thus correspond to what applies to the European Netherlands under GDPR and UAVG. The processing of the BSN by organisations in the Caribbean Netherlands, the processing of personal data in the context of digital services to citizens and companies in the Caribbean Netherlands (WDO) and the inclusion of the BSN on the BES ID card are for the most part regulated in this bill itself: the amendment of the Wabb, WDO and WIDk BES. This bill contains a clear regulation regarding the purposes of data processing, the personal data that can be processed (registered and provided) and the authorities

⁹⁵ Parliamentary documents II, 2017/18, 34939, No 3.

responsible for this. For reasons of substance, reference is made to Chapter 2 of this Explanatory Note.

With regard to the right to information, the data subject has the same rights in the Caribbean Netherlands as in the European Netherlands. For the granting of the BSN, the Wabb includes a scheme requiring administrative colleges to notify citizens of the granting of the BSN. With regard to the appropriate security of data processing, it is important that the WDO regulates this. Article 3 of the WDO obliges organisations to apply designated standards. Standards are agreements on e.g. electronic data exchange, accessibility or security, laid down in so-called specification documents, which describe what data looks like, what it means and how it can be exchanged. This makes it possible to automate (administrative) processes in an efficient, safe and reliable manner and to achieve independence of ICT system suppliers. These standards will apply in full to organisations (service providers) in the Caribbean Netherlands.

4. Regulatory pressure

Regulatory burden effects are the investments and efforts that businesses, citizens or professionals must make to comply with laws and regulations. Control pressure effects are divided into regulatory costs and experienced regulatory burdens. Regulatory burdens are costs that businesses, citizens or professionals (once or structurally) have to incur in order to meet obligations resulting from new or amended regulations. These may include costs that have to be incurred as a result of providing information (information obligations) and, in addition, costs that must be incurred in order to comply with obligations to do or fail to act or conduct (substantial obligations). Regular printing costs are calculated using the Standard Cost Model (hereinafter: SKM). In doing so, use is made of the Manual Measurement Regulatory Printing Costs. The SKM assesses what actions a company, citizen or professional needs to carry out in order to comply with the obligations, and how much time and what expenses are involved. With experienced regulatory pressure, it is not about the costs that one has to incur to comply with legislation and regulations, but it is more about qualitative aspects such as workability, proportionality and perceived usefulness. Experienced regulatory pressure is not further quantified with the SKM.

The registration of the BSN and its inclusion on the ID card BES (amending the BRP Act, Wet bap BES and WIDk BES) does not affect the regulatory burden on citizens. The citizen does not have to carry out any additional actions in order to obtain the BSN; this is regulated by the government when registering a person. Also, the person concerned does not have to apply for a new ID card BES; the ID cards retain their validity period.

The use of the BSN and login tools (change of Wabb and WDO) in digital services to citizens and businesses is expected to reduce the regulatory burden. The extent of that reduction in regulatory burden depends on the precise organisation of that service, by the service provider itself.

Moreover, the bill does not contain any obligation to use the login tools under the WDO. Citizens may, if they so wish, purchase public services by paper means unless otherwise provided for in sectoral legislation.

5. Consultation and advice

PM

ARTICLE BY ARTICLE EXPLANATORY NOTES

Article I, part A (Article 8 of the General Provisions Act on Social Security Number)

With the Adaptation Act on Basic Registration of Persons, the social tax number (hereinafter: social security number) removed from tax legislation.⁹⁶ Provisions relating to the social security number have also been omitted from the Social Security Number Act (General Provisions Act on Social

⁹⁶ For the explanatory notes on the deletion of the social security number, see: *Parliamentary documents II* 2012/13, 33555, No 3, p. 2-3.

Security Number) (hereafter: WABB) to be deleted. This has been achieved by means of Article IX of the Reparation Act of the Ministry of Interior 2018.⁹⁷ However, Article 8(4) of the Wabb contains, by mistake, a reference to the expired Article 3(1)(e). The present amendment also deletes this incorrect reference.

Article I, Section B (Chapter 5a (new) of the General Provisions Act on Social Security Number)

Pursuant to Article 2 of the Public Entities Act of Bonaire, Sint Eustatius and Saba, a regulation applies only to Bonaire, Sint Eustatius and Saba if this is provided for by law or otherwise undeniably follows from a statutory regulation. If nothing is provided for in a Dutch legislation and its applicability to Bonaire, Sint Eustatius and Saba also does not follow from any other statutory provision, that regulation applies only to the European part of the Netherlands. It does not explicitly follow from the Wabb that this law applies to the BES. With the addition of chapter 5a, this bill ensures the applicability of the Wabb to Bonaire, St. Eustatius and Saba. This chapter consists of four articles (21a to 21d).

The effect of declaring the Wabb to apply mutatis mutandis to Bonaire, St. Eustatius and Saba is that entities governed by public law in public entities, such as the Caribbean Netherlands Tax Authority and the administrative college, are covered by the term 'public entity' in Article 1.1 of Wabb.⁹⁸ This means that these entities qualify as 'user' and thus become entitled to process the BSN in the performance of public tasks.⁹⁹

Pursuant to Article 12 of the Wabb, the user must ensure that the BSN relates to the person whose data is processed (the so-called obligation to erase). As regards Article 15(1)(c) of the Wabb, it has been chosen to refer only to Article 1(1)(1) of the Law on the Identification Obligation (see Article 21c(1) of this Bill). Only the invalidity of the passport and Dutch identity card (according to Article 1(1)(1) of the Law on the Obligation of Identification) can be consulted centrally in the basic register of travel documents via the BSN facilities. Other documents such as the driving licence (Article 2(1)(c) of the BES Identification Obligation Act), the foreign national document (Article 2(1)(d) of the BES Identification Obligation Act) and the identity card BES (Article 2(1)(a) of the BES Identification Obligation Act) cannot be used by means of the management facility BSN (hereinafter: BV-BSN) are checked for their validity. Section 2.5.2.2 of the general part of this explanatory memorandum deals with the implementation of the obligation of verification by BSN users in the Caribbean Netherlands.

Article 21c(2), to be added to the Wabb, governs the creation and allocation of BSN to residents of a public entity by the Minister of BZK. Article 21d of this bill provides that the Executive Board, and not the Minister of BZK, communicates the granting of the BSN to the citizen. This is explained in more detail in section 2.5.2.1 of the general part of this explanatory memorandum.

Bonaire, St. Eustatius and Saba are already responsible for monitoring the processing of the BSN by the administrative entities and other users in the Caribbean Netherlands on the basis of Article 2 in conjunction with Article 44 of the Wbp BES. Therefore, this legislative proposal does not include any regulation with regard to this supervision.

Article II(A) (Article 2 of the BES Identity Cards Act)

With this amendment, the ID-number is replaced by the BSN on the identity card BES. In order to include the BSN on the BES identity cards, new models of the BES ID cards should be established. Article 2(1) of the BES Identity Cards Act specifies which information must appear on the identity card BES and Article 1a of the BES Identification Cards Decree stipulates that the models are to be determined by ministerial order for each public entity. For this purpose, new models will be included in Annexes 1, 2 and 3 to Article 2 Identity Cards Regulation BES. The amendment to Article 2(1) of the BES Identity Cards Act will only enter into force when the residual stock of the

⁹⁷ *Parliamentary documents II 2017/18, 34852, No 3*. The expiry of Article 3(1)(e) and the second sentence of Article 8(2) of the Wabb.

⁹⁸ Having regard to Article 5 of the WolBES, the administrative college of public bodies is a body of a legal person established under public law.

⁹⁹ Article 10 Wabb.

old models is at its lowest. The model without BSN will still be in circulation until it expires automatically (that is: when the current period of validity expires).

Article II(B) (Article 6 of the BES Identity Cards Act)

Article 6(3) of the BES Identity Cards Act provides that, when the identity card is replaced, the code number (ID-number) used at the time of the first issue is maintained. Now that the ID-number is replaced by the BSN, this provision has become redundant. It follows from Article 7 of the Wab that a BSN is granted only once (and remains unchanged). This BSN will therefore also be included when applying for a new identity card.

Article II(C) (Article 13 Act of the BES identity Cards Act)

The proposed Article 13 of the BES identity Cards Act stipulates that the BES ID cards issued prior to the entry into force of this bill shall remain valid. This is done by establishing two models that are (valid) simultaneously; ID cards with BSN and ID cards with ID-number. The ID card BES is valid for five years.¹⁰⁰ This means that until five years after the entry into force of this bill, if adopted and raised to law, the ID cards BES with the ID-number and without the BSN will remain in circulation.

Article III(A) (Article 1.1 of the Basic Registration of Persons Act)

Article III, part A, concerns an adaptation of the definition clause (Article 1.1) of the Basic Registration of Persons Act (hereinafter: BRP Act). The definition of 'resident of a public entity' (new part bb) is added to this definition provision. This also requires adaptation of the definition of 'person list' (section c); including a reference to the new category of registered persons.

Article III, Parts B, C and D (Articles 1.2, 1.4 and 1.15 of the Basic Registration of Persons Act)

With the introduction of a new category of registered persons, the residents of a public entity, the terminology used in the first chapter of the BRP Act must be supplemented by always referring to this new category. This is explained in more detail in section 2.3.2.1 of the general part of this explanatory memorandum.

Article III, subsection E (Article 2.67 of the Basic Registration of Persons Act)

This amendment ensures that a person registered as a resident of a public entity in accordance with Chapter 2, Section 3 (new), cannot be simultaneously registered as a non-resident under Chapter 2, Section 2.

Article III, subsection F (Chapter 2, Section 3 (new) Basic Registration of Persons Act)

After the section on the retention of data on non-residents in the Basic register of persons (hereinafter: BRP), this section provides for the maintenance of data on residents of a public entity (Articles 2.83 to 2.88) to be added to the BRP Act. Only persons registered as a resident of a public entity in the Basic Administrations of Personal Data BES (hereinafter: Bap BES) may be included in the BRP as a resident of a public entity (the proposed Article 2.83(1)). As a member of the Bap BES pursuant to Article 3(1) of the Act on Basic Administrations of Personal Data BES (hereinafter: bap BES Act), this section refers several times to the administrative colleges of the public sector entities and therefore they are defined in Section 2.82 of the BRP Act. For a substantive explanation of this new section, see section 2.3.2.2 of the general part of this explanatory memorandum.

Article III(G) (Article 4.3a (new) Basic registration of persons Act)

In order to avoid double registration in the BRP, a check and data exchange is always carried out between the BRP and the Bap BES in the process of registration and data retention. The proposed Article 4.3a provides an explicit formal legal basis for the Minister of BZK to analyse the data in the BRP and Bap BES in conjunction.

Article III, subsection H (Article 4.9 of the Basic Registration of Persons Act)

¹⁰⁰ Article 3 of the BES Identification Cards Act.

The purpose of Article 4.9 of the BRP Act is to eventually delete the administrative number for (non-)residents. For residents of the public sector entities, this provision shall be governed by this provision.

Article III, Section I (Article 4.16a Act on the Basic Registration of Persons)

With the addition of the section for residents of a public entity, it is possible to derogate from this provision for the purpose of an experiment.

Article IV, part A (Article 1 Act on Basic Administrations of Personal Data BES)

The definition of public entity has been further clarified by linking it to Article 1(1)(a) of the Public Entities Act Bonaire, Sint Eustatius and Saba. In addition, the BSN is defined for the purpose of the registration possibility of the BSN in the Bap BES envisaged in this proposal.

Article IV(B) (Article 10 Act on Basic Administrations of Personal Data BES)

Article 10 of the Bap BES Act lists exhaustively which categories of personal data are recorded. The BSN is added in order to create a basis for the registration of the BSN in the Bap BES. This bill also aims to no longer register the identity number in the Bap BES now that the BSN replaces it. The expiry of the identity number will be effected at a later date because public sector entities and other users of the Bap BES will need some time to adapt their own systems to the introduction of the BSN. This means that both the BSN and the ID number remain in the Bap BES for some time and are provided from there to the users.

Article IV(C) (Article 12a (new) Basic Administrations Personal Data Act BES)

With the addition of a new Article 12a, it is primarily ensured that the BSN of the registered person is included on his own personal list. In addition, the registered person's BSN of their relatives (spouse, partner, child) are also included on the person's list.

Article IV(D) (Article 13 Act on Basic Administrations of Personal Data BES)

With the amendment of Article 13 of the Wbap BES, the residents of Bonaire, St. Eustatius and Saba entity are no longer obliged to appear in person when reporting a move within a public entity.¹⁰¹ For further explanations, see section 2.4.2.4 of the general part of this Explanatory Note.

Article IV, Section E (Article 17b (new) Basic Administrations Personal Data Act BES)

This new provision is based on Article 2.54 of the BRP Act, which imposes the obligation to send the personal list to the registered person. Pursuant to the new Article 17b, the person concerned will receive an overview (excerpt) of his/her personal list within four weeks of his (first) entry in the Bap BES of the Executive council (bestuurscollege). For further explanations, see section 2.4.2.1 of the general part of this explanatory memorandum.

Article IV, point F (Article 27c (new) Basic Administrations Personal Data Act)

This provision is based on section 2.68 of the BRP Act. With the new Article 27c Bap BES Act, administrative colleges are obliged to register residents of a public entity in the BRP and to report changes in the data of these residents to the Minister of BZK. For further explanations, see section 2.4.2.3 of the general part of this Explanatory Note.

Article IV(G) (Article 30a (new) Basic Administrations Personal Data Act)

The mandatory self-assessment is introduced with this component as a quality tool in the Bap BES Act. This instrument already exists as an obligation for municipalities under Article 4.3 of the BRP Act. For further clarification, see section 2.4.2.5 of the general part of this Explanatory Note.

Article IV, subsection H (Article 35 (new) Basic Administrations Personal Data Act)

By replacing the ID-number with the BSN in the BES Identity Cards Act (see Article II, part A of this bill), the definition of the ID-number expires while the number remains temporarily included in the Bap BES. That is why this article in the Bap BES Act ensures that this number will still be recorded and will lapse by Royal Decree.

¹⁰¹Amendment to Article 13(2) of the Bap BES Act.

Article V (Article 24 Act on the protection of personal data BES)

With the expiry of paragraph 2, the relationship between paragraphs 1 and 2 of Article 24 (old) of the Act on the protection of personal data BES (hereinafter: Wbp BES) is clarified. In particular, it was unclear whether a general administrative order, which lays down rules on the use of the BSN, needs a specific legal basis or whether the Wbp BES as such provides that basis. The ambiguity that this creates is no longer desirable in view of the primacy of the legislature as well as the evolving function and (legal) consequences of the BSN in social traffic (in connection with (electronic) identification and access to public services). It is therefore proposed that the balancing of the use of the BSN, in particular with regard to allowing the processing and exchange of BSN by private organizations, should be made in a (domain) specific law.

The amended Article 24 makes it clear that from now on rules on BSN use always require a specific formal legal basis. The article is therefore better in line with Article 1(d)(2) of the Wabb, which allows the use of the BSN by entities other than public authorities, in so far as they carry out activities requiring the use of the BSN by or under law. However, such a formal law may, for example, provide that a general administrative order may designate organizations that process the BSN in implementation of the relevant law.

Article VI (Chapter 7a (new) Digital Government Act)

With the addition of the new Chapter 7a to the Digital Government Act (hereinafter: WDO) extends the application of the WDO to public entities. First of all, the scope of a number of concepts is extended to the Caribbean Netherlands, including the companies and legal entities, the administrative entities and the courts (Article 22c of the WDO).

Only the obligation to accept foreign resources provided for in Article 7(1)(c) and (2) (c) and Article 15(8) of the WDO shall not apply to the public sector entities. For further explanations, please refer to Section 2.6 of the general part of this explanatory memorandum.

The monitoring of compliance with the standards to be applied, the obligation to accept and classify and the use of public funds in the public domain by local authorities is carried out through regular (inter-administrative) lines (see Article 17 WDO). For the Caribbean Netherlands it is stipulated that the Minister of BZK is responsible for supervising compliance with Articles 3, 6, 7, 8(1) and 15 of the WDO. The other provisions of this chapter (Articles 18 and 19) shall apply in its integrity to the Caribbean Netherlands.

Taking into account the absorption capacity of public sector entities and also the differences between them, a phased entry into force of the WDO in the Caribbean Netherlands is foreseen with this provision. This means that certain parts of the WDO – such as public login tools for citizens – can enter into force rather than other components. It will also differentiate – as in the European Netherlands – per public entity and by organization(s) with regard to its entry into force, by means of a connection scheme (the proposed Article 22f).

Article VII (entry into force)

Upon the entry into force of this bill, the absorption capacity of the public sector entities (organisation units) will be taken into account.

The State Secretary for the Interior and Kingdom Relations,

