

## **Policy Compass form for internet consultation**

Title:

### **Amendment to BES Aviation Act for basis of public service obligation**

#### **∞ Who are stakeholders and why?**

Auxiliary Questions

- Who are direct or indirect stakeholders in the issue at hand?

Citizens and companies, governments of the Caribbean part of the Kingdom and airlines

- Who have relevant knowledge about and experience with the issue?

Central government, governments of the Caribbean part of the Kingdom and airlines

- In what ways have stakeholders been involved in the different phases of the policy process so far?

Possible introduction of a public service obligation and the necessary legal basis for it have been regularly discussed in, among others, CN consultative bodies and bilateral contacts with local governments. Also discussed were the studies commissioned by IenW in which options for a public service obligation were explored.

#### **1. What is the problem?**

Help questions

(a) What is the problem?

In air transport in general, the operation of flights is largely determined by commercial market demand. As a result, routes that are not commercially attractive to airlines may be served less (in terms of flight frequency, capacity, continuity, ticket prices) than is desirable from a broader societal perspective. Against that background, in the Caribbean part of the Netherlands air connections with the public entities of Saba and St. Eustatius (to and from the country of St. Maarten) in particular require attention. For example, research shows with respect to these islands that aircraft are important to meet the need for transportation to and from, for example, hospital and medical specialists, educational institutions, commercial services and connections for employment. A public service obligation in such cases can ensure a minimum supply of scheduled flights that is conducive to the maintenance and progress of relevant areas in the Caribbean Netherlands. A legal basis for establishing a public service obligation is still lacking. The present bill creates a legal basis in the BES Aviation Act on the basis of which the Minister of IenW can establish a public service obligation.

b) What are the causes of the problem?

As far as flights between Sint Maarten and Saba and between Sint Maarten and Sint Eustatius are concerned, these are flight routes to sparsely populated areas with sometimes (especially on Saba) short runways which requires deployment of special aircraft. This makes the operation of such routes on a commercial basis difficult.

c) What is the scope of the problem?

As mentioned, in particular the connection with the public entities of Saba and St. Eustatius requires attention which for their accessibility largely depend on air connections with St. Maarten. Accessibility is important for a number of vital elements of the economy and daily life on the islands. The public entities and residents have been pushing to improve accessibility for some time.

d) What is the current policy and what has the evaluation revealed?

Instrument currently deployed to safeguard the public interest of good accessibility of Saba and St. Eustatius is the State's shareholding in Winair, the only airline currently operating scheduled services on these islands. An evaluation of the State shareholding in Winair was sent to the Chamber in December 2021. This concluded that such a limited shareholding (7.95%) is not the most appropriate instrument to guarantee the accessibility of Saba and St. Eustatius. An exploration of a public service obligation (PSO) was announced as an alternative instrument.

e) What happens if the government does nothing (Zero Option)? What justifies government intervention?

If no legal basis is created, a public service obligation could not be established. That is, when the decision is made to deploy this policy instrument, this legal basis is needed. With that, this can be seen as a no-regret measure.

## **2. What is the intended goal?**

Auxiliary questions

(a) What are the policy objectives?

To create a legal basis for the establishment of a public service obligation to properly guarantee the accessibility of public entities in the Caribbean Netherlands for connections that require it.

(b) To what sustainable development goals (SDGs) and broad welfare outcomes do the goals contribute?

Realization of more frequent air connections, with sufficient capacity and with lower ticket prices, contributes to economic and social development and also makes e.g. educational institutions and hospitals more accessible.

## **3. What are options to achieve the goal?**

Auxiliary questions

(a) What are promising leverage points to achieve the goal?

In the evaluation of the state participation in Winair in 2021, several alternative instruments were considered, concluding that the creation of a public service obligation is the best option. See also this evaluation. A public service obligation is an instrument that allows the government to impose conditions on airlines on a particular air transport route with respect to certain matters. The main four issues are: maximum ticket price, minimum flight frequency, capacity and continuity. The instrument allows the government to guarantee a minimum supply when the market has proven unable to meet the demand that should be served from a societal perspective. Commissioned by the Ministry of IenW, the SEO agency conducted research in the first half of 2023 into possible variants for the implementation of a PSO. The research report, with a supplementary memorandum, was sent to the Chamber in June 2023.

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

See under point 3a.

c) What is the policy theory (goal tree) for each promising policy option?

See under 3a.

#### **4. What are the implications of the options?**

Auxiliary questions

(a) What are the expected impacts for each policy option?

See under point 3a.

b) Which mandatory tests apply and what are their outcomes (to the extent known)?

In parallel with the internet consultation, an enforceability, enforceability and fraud-proofing test (HUF test) and an Advisory Committee on Regulatory Burden Testing (ATR test) are being conducted. The results of these tests are not yet known.

#### **5. What is the preferred option?**

Auxiliary questions

(a) What is the proposal?

The proposal is to create a legal basis in the BES Aviation Act. This legal basis is needed to possibly establish a public service obligation for connections with public entities in the Caribbean Netherlands through a ministerial regulation.

(b) How does the proposal take into account:

- effectiveness and efficiency;
- feasibility for all relevant parties (including doability, regulatory burden and enforcement);
- broad social impact?

The evaluation in 2021 led to the conclusion that a public service obligation is the most appropriate instrument to safeguard the public interest of accessibility. A number of options for implementing a public service obligation were subsequently explored by the SEO agency and these reports were published in 2023. The requirements that can be imposed when establishing a public service obligation, for example in terms of the number of flights per day and ticket prices, depend on the budget that the government is willing to make available for a public service obligation. If a public service obligation is specifically established on the basis of a ministerial regulation, implementation aspects and enforcement, among other things, will have to be fleshed out.

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

This bill creates a legal basis for the establishment of a public service obligation. However, the actual establishment of a public service obligation is expected to require a structural financial government contribution. No financial resources are currently budgeted for this within the central government. In addition, if a tender is launched for the public service obligation, the question is whether there will be sufficient market demand to be able to fulfill the public service obligation.

(d) What is the intended monitoring and evaluation?

The bill assumes evaluation of effectiveness and efficiency every seven years after a ministerial regulation in which a public service obligation will be included is adopted.