

**Consultation version March 2023**

**Amendment of the Public Entities Bonaire, Sint Eustatius and Saba Act and the Public Entities Bonaire, Sint Eustatius and Saba Finances Act in connection with the review of inter-administrative relations between the European Netherlands and the Caribbean Netherlands (Act Amending the Public Entities Bonaire, Sint Eustatius and Saba Act and the Public Entities Bonaire, Sint Eustatius and Saba Finances Act)**

**EXPLANATORY MEMORANDUM**

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## GENERAL PART

### 1. Introduction

#### *1.1 General*

This purpose of this bill is to strengthen and improve inter-administrative relations between the Caribbean public entities (openbare lichamen) Bonaire, Sint Eustatius and Saba (hereinafter: the public entities) and the central government. In addition, the systems for administrative and financial supervision will be updated. This bill was drafted in the context of the government's response to the requested Advice from the Advisory Division of the Council of State on relations between the European and the Caribbean parts of the Netherlands and the Interdepartmental Policy Study of the policy approach and coordinating role of the Ministry of the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties; hereinafter: BZK) with regard to the Caribbean Netherlands of 2019, and is part of a broader process of improving administrative and financial relations between the central government and the public entities.<sup>1</sup>

Since the constitutional reform on 10/10/10, by which the islands of Bonaire, Sint Eustatius and Saba became part of the Dutch constitutional system as public entities, the central government and the public entities have worked hard to establish the public entities' position within the Netherlands. Moreover, continuous efforts have been made to improve relations. The basis for administrative and financial relations has been set out in the Public Entities Bonaire, Sint Eustatius and Saba Act (Wet openbare lichamen Bonaire, Sint Eustatius en Saba; hereinafter: WoIBES) and the Public Entities Bonaire, Sint Eustatius and Saba Finances Act (Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba; hereinafter: FinBES). More than a decade after 10/10/10, it is clear that the central government's efforts on behalf of the Caribbean Netherlands have led to positive developments, but that work still remains to be done. Lessons have also been learnt from the way in which regulations and policy have developed in the Caribbean Netherlands. While a new constitutional structure has been set up with the legal amendments of 10/10/10, efforts are now being made – in view of subsequent experiences – to further improve inter-administrative relations between the central government and the public entities. The constitutional position of the islands as public entities remains broadly unchanged. This is examined in more detail in the broader policy vision set out in Chapter 2.

The present bill provides guidelines for achieving a more effective administrative structure with regard to the public entities. At the same time, work is being done through other processes in areas such as strengthening administrative and executive power, improving public services, a clear division of tasks between the public entities and ministries in the Netherlands, improving financial relations and greater uniformity in policy-making and rule-setting on the part of the central government. Aspects of this bill are closely related to these other areas, which can be seen as prerequisites for achieving the government's long-term vision.

A revision of the method of supervision of the public entities forms an important part of the proposals. Both inter-administrative and financial supervision start from the same basic principles and vision of administrative relations. This means, among other things, that some elements of administrative and financial supervision will be scrapped or made less onerous. The differences between the public entities make an individual approach necessary. To make this possible, the present bill includes a proposal for differentiated financial supervision models, reflecting the individual characteristics and speed of development of each of the public entities. Furthermore, inter-administrative supervision will be modernised in line with the adaptations of the Municipalities Act (Gemeentewet) and the Provinces Act (Provinciewet) by the Generic Supervision Revitalisation Act (Wet revitaliserend generiek toezicht).<sup>2</sup>

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<sup>1</sup> Parliamentary Papers (Kamerstukken) II 2019/20, 35 300, IV, no. 11.

<sup>2</sup> Parliamentary Papers II 2009/10, 32 389.

The possible revision of the other areas covered by FinBES, namely the restrictions on borrowing options, the special purpose grants and the free grant, likewise suggested in the aforementioned government response, is still being considered. The current proposed amendment to FinBES is therefore confined to Chapters I – III of that law. The substantive provisions on integrated asset management and borrowing options in these chapters are excluded.

Another element of the bill is the scrapping of the position of kingdom representative (Rijksvertegenwoordiger), with the associated duties being reassigned to the island governor (gezaghebber) or the Minister of BZK, or being completely discontinued. Furthermore, with regard to FinBES, proposals are included concerning the rules on the financial function of the public entities and the financial supervision they contain. The review of the financial supervision of the public entities considers the question whether the structure and organisation of supervision are efficient and effective. Finally, proposals for the financial supervision of private legal entities (privaatrechtelijke rechtspersonen) with an association with the public entities are included.

The proposals have been drawn up in close consultation with the public entities, and local adaptation was a guiding principle in the discussions and the basic principle in the eventual proposals. In the context of this bill, in addition to the consideration of the amendments that are legally necessary and desirable, attention has also been paid to the vision and the prerequisites for a successful implementation of the legislative amendments. In addition, the principle of 'comply or explain' has been taken into account in the considerations underlying the proposals. This is discussed in more detail in Paragraph 2.1.

The opportunity has also been taken to implement a number of changes to WoIBES that are not related to the government's response, in particular a number of proposed amendments relating to the court of auditors. For substantive discussion of this, reference is made to Paragraph 3.4 and the section-by-section part of this explanatory memorandum.

The bill is co-signed by the Minister of BZK in view of the changes to the duties of the BES Board of Financial Supervision (College financieel toezicht BES; hereinafter: Cft BES) and by the Minister of Finance in view of the revision of FinBES.

### *1.2 Reader's guide*

Chapter 1 contains some introductory and historical reflections, and discusses the purpose of and occasion for this bill. Chapter 2 looks at the underlying policy vision and general starting points for inter-administrative relations between the public entities and the central government. This is related to some of the amendments. Chapters 3 and 4 examine the specific changes to WoIBES and FinBES respectively. Chapters 5 and 6 deal successively with the relationship with higher-ranking law and the relationship with other national legislation. Chapters 7 to 10 successively consider the financial implications of this bill, the administrative burden and regulatory pressure, evaluation and consultation.

### *1.3 Purpose and occasion*

As already stated in Paragraph 1.1, the bill elaborates on the government's response from 2019 to the Council of State Advice. The government was responding to that advice and to the recommendations of the Interdepartmental Policy Study. Moreover, since the constitutional reform of 10/10/10, by which the islands of Bonaire, Sint Eustatius and Saba became part of the Dutch constitutional system as public entities, much experience has been gained and lessons about inter-administrative relations have been learned. Relations between the public entities and the central government can be improved and tasks can be better divided, taking account of the public entities' desire for greater local self-government and individual responsibility.

The aim of this bill is therefore to lay a foundation for the desired improvements based on these principles. Naturally, the proposed new situation will also be evaluated. Alongside the proposal for a new basis for improving inter-administrative relations, these proposed improvements in the relationship between the European and Caribbean Netherlands require constant monitoring. These principles will be further elaborated in the general part of this explanatory memorandum.

## 1.4 Background

### 1.4.1. Establishment of the public entities

With the constitutional reform of the Netherlands Antilles on 10/10/10, the islands of Bonaire, Sint Eustatius and Saba became part of the Dutch constitutional system as public entities. They thus become part of the decentralised unitary state of the Netherlands, acquiring the status of public entities. The islands are commonly also referred to as 'special municipalities', because the model of the Dutch municipality cannot simply be applied. Bonaire, Sint Eustatius and Saba have much smaller populations than the average municipality, as well as a set of tasks that differs in certain respects from those that municipalities normally have to handle. The economic and social circumstances, the great distance from the European part of the Netherlands, the insular nature of the public entities, the small land area and population size, the geographical circumstances, the climate and other factors were and are reasons for making arrangements other than those made for municipalities. Following a recommendation from the Advisory Division of the Council of State in 2006<sup>3</sup>, it was therefore decided to establish the islands in law as public entities within the meaning of Article 134 of the Constitution. This autonomous position of the three islands within the Dutch state system was also desired by the islands themselves.

The establishment and organisation of the public entities are regulated in WolBES. The Municipalities Act was taken as a starting point for the drafting of WolBES, and most of the derogations from the Municipalities Act concerned stricter supervision. Financial aspects are regulated in FinBES, for which, in addition to the Municipalities Act and the Grants to Municipal Authorities Act (Financiële-verhoudingswet; hereinafter: Fvw), the BES Temporary Financial Supervision Decree (Besluit tijdelijk financieel toezicht BES) which was valid at the time also formed an important basis.

As a derogation from the Municipalities Act, the function of kingdom representative was created for the public entities, as an administrative link between the central government and the public entities. The kingdom representative has separate powers that are mainly designed to ensure good governance. The decision at that time to have a kingdom representative for the Caribbean Netherlands was partly due to the fact that the Caribbean Netherlands falls directly under the central government and therefore lacks the province as an administrative layer. Moreover, the kingdom representative function provided the opportunity to supervise and promote cooperation at a more local level. In addition, Cft BES was set up for the financial supervision of the public entities. The establishment of Cft BES does not change the fact that the Minister of BZK is in formal terms the supervisory authority with regard to the financial management of the public entities. In the European Netherlands, financial supervision of the municipalities is regulated in the Municipalities Act and carried out by the provincial executive.

In addition, the BES Public Entities Implementation Act (Invoeringswet openbare lichamen BES) regulates important matters relating to the new position of the public entities, such as the choice to base a significant part of the applicable law in the Caribbean Netherlands on former Netherlands Antillean legislation and regulations.<sup>4</sup> When the public entities were established, it was agreed to apply a period of legislative restraint, which meant that, in principle, European Dutch legislation and regulations were not applied to the Caribbean Netherlands unless there were good reasons for doing so.<sup>5</sup> The argument put forward for this was that not too much should change at once in the Caribbean Netherlands compared to the situation before 10/10/10, partly in order to allow for the islands' absorption capacity.<sup>6</sup> It remains the case that the Caribbean Netherlands has its own legal system, in which Dutch legislation and regulations are only or partly applicable to the extent determined in that system.

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<sup>3</sup> Parliamentary Papers II 2006/07, 30 800 IV, no. 3 (advice) and no. 4 (response).

<sup>4</sup> Section 2 of the BES Implementation Act.

<sup>5</sup> 2.16 Ar.

<sup>6</sup> Parliamentary Papers II 2009/10, 31 954, no. 7, p. 12.

#### 1.4.2 Developments after 10/10/10

Naturally, much has occurred since the constitutional change and much has been learnt about the new constitutional relations.

When Bonaire, Sint Eustatius and Saba were established as public entities, it was agreed that an evaluation of the new constitutional structure would take place after five years.<sup>7</sup> In the run-up to that evaluation, various points for attention were identified with regard to administrative relations. For example, the Advisory Division of the Council of State noted in 2012 that due to the increase in the number of legal rules in the Caribbean Netherlands, the impression had arisen on the islands that the Netherlands was prioritising enforcement and supervision over improving local living conditions. According to the Division, the whole set-up was also creating 'a compartmentalised and disjointed impression' in terms of coordination.<sup>8</sup> Among other things, the Council of State recommended involving the public entities' citizens and administrative bodies more in the development of rules and keeping the local context in view in doing so. A number of changes to the position of kingdom representative were also recommended to substantiate the kingdom representative's role as an advocate for the public entities' interests. The function of the kingdom representative was also discussed in two reports by the Inspection, Risk Analysis and Advisory Unit of the Ministry of Foreign Affairs and by the Van Gestel/Thunnissen/Johnson Committee from 2013 and 2014<sup>9</sup> on the central government's coordination of the Caribbean Netherlands. The position of the kingdom representative was identified in these reports as problematic, partly because the kingdom representative's coordinating duties are not clearly formulated in WolBES, as a result of which it was insufficiently clear what the role entailed in this area. In addition, it was pointed out that the job descriptions of, among others, kingdom representative staff members and staff members of the National Office for the Caribbean Netherlands (Rijksdienst Caribisch Nederland; hereinafter: RCN) were unclear. Based on these observations, the reports recommended strengthening the coordinating role of the Minister of BZK, ensuring role stability with precise job descriptions for ministries and public entities, and specifying the coordinating duties of the kingdom representative in an official instruction. Further recommendations were made on reinforcing local executive power by organising technical assistance, setting up training programmes and internships and increasing the possibilities open to the island governments. In response to these reports, the government stated at the time:

- that it would focus on strengthening administrative cohesion and central coordination in The Hague;
- that it was drawing up a long-range programme with the islands containing priority themes and the intended level of facilities and services;
- that it would introduce segregation between policy and implementation, with the kingdom representative becoming responsible for the National Office for the Caribbean Netherlands shared service;
- that it would adjust the function profile of the kingdom representative so that it would both have the statutory duties of the central government and play a liaison role between the central government and the public entities; and
- that it would provide the opportunity for a differentiated approach between the islands.<sup>10</sup>

However, it was clear from the evaluation in 2015 of the new political structure's implementation that the central government's efforts in response to the reports on central government coordination had not been enough to bring about the desired improvement in administrative

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<sup>7</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p. 6.

<sup>8</sup> 20 December 2012 (Third periodic review of inter-administrative relations) Parliamentary Papers II 2012/13, 33 400-VII, no. 67

<sup>9</sup> 18 November 2013 (Analysis of the functioning of the coordination of the central government in the Caribbean Netherlands) and 12 March 2014 (Central government coordination of the Caribbean Netherlands) Parliamentary Papers II 2013/14, 33 750, no. 35 (annexes)

<sup>10</sup> Parliamentary Papers II 2013/14, 33 750, no. 35

relations.<sup>11</sup> The 'Committee for the evaluation of the new constitutional structure of the Caribbean Netherlands' stated, among other things, that the functioning of the administrative structure and of democratic oversight was limited. It was also found that the island governor, with his set of tasks, was experiencing a tension between his role as chair of the island council (eilandsraad) and the executive council (bestuurscollege) on the one hand and his duty to oversee the lawfulness of decisions on the other. In addition, the evaluation described a sense of disenchantment within the public entities regarding the level of prosperity on the islands. This was partly due to the lack of a common vision about the level of facilities and services to be achieved and of an integral plan for the development of the public entities, which meant that there was no shared idea of the acceptable level of development and services. In practice, the absence of a common vision for the future, supported by the national government and the islands, meant that the European Dutch conception was dominant in many areas and local circumstances were not always sufficiently taken into account. This had given rise to discontent on the islands.

In response to the evaluation, the government indicated that it would focus on four pillars to reinforce administrative power and raise the level of local facilities and services:<sup>12</sup>

- Institutional resilience: although the evaluation did not lead to institutional changes, the proposed Constitutional amendment was continued, creating a Constitutional basis and safeguards for the Caribbean public entities;
- The stimulation of socio-economic development, with a focus on lowering the cost of living, economic development and raising the minimum wage and related social benefits. In this context, efforts have been made in recent years to reduce utility costs, increase child benefit, reduce dependence on imported fuel and diversify the economy.
- Better collective facilities, through improvements to childcare, education, housing, infrastructure and other areas. Significant progress has been made in this area in recent years, including through the BES(t)4Kids programme to improve childcare, the Talent Development Programme - Bonaire (Talent Ontwikkel Programma -Bonaire; hereinafter: TOP Bonaire) to make it easier for young professionals with Caribbean roots to return, the expansion of social housing provision and the renovation of airports, ports and roads;
- Good (local) public administration, with a focus on reinforcing expertise and capacity on the islands and the exchange of expertise. To this end, twinning programmes have been set up with municipalities and expertise has been made available to raise professional standards at the civil affairs departments.

Despite the central government's efforts, administrative and financial relations, administrative and executive power and the level of facilities and services on the public entities have remained points for attention. This is clear from the Council of State Advice and the Interdepartmental Policy Study of 2019 (see Paragraph 1.4). The Council for Public Administration also addressed this problem later on in its enquiry into the approach to and consequences of the Covid-19 pandemic.<sup>13</sup> In addition, poverty on the islands has remained widespread despite the adoption of a social minimum benchmark and the work to improve the level of services on the islands.<sup>14</sup> The fact that administrative relations have remained a point for attention became painfully clear at the time of the administrative intervention on Sint Eustatius in 2018. The decision to intervene was taken after a Committee of Wise Men concluded in early 2018 that the government on Sint Eustatius was guilty of lawlessness, financial mismanagement, discrimination, intimidation, threats and the pursuit of personal power, and hence of gross dereliction of duty.<sup>15</sup> At the same time, the

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<sup>11</sup> 12 October 2015 (Vijf jaar verbonden – Bonaire, Sint Eustatius, Saba en Europees Nederland ('Connected for five years – Bonaire, Sint Eustatius, Saba and the European Netherlands') Parliamentary Papers II 2015/16, 34 300, no. 23

<sup>12</sup> Parliamentary Papers II 2015/16, 34 300 IV, no. 59

<sup>13</sup> Van crisis naar opgave ('From crisis to challenge'), Council for Public Administration, March 2022

<sup>14</sup> Oog voor ouderen in Caribisch Nederland ('Looking out for the elderly in the Caribbean Netherlands'), National Ombudsman, 10 September 2019; Het maakt uit waar je wieg heeft gestaan ('It matters where you were born'), National Ombudsman, 8 September 2020

<sup>15</sup> Parliamentary Papers II 2017/18, 34 877, no. 3



Committee also criticised the central government for having included extra safeguards in WolBES and FinBES to contain financial and administrative risks, which meant that the public entities were visibly being treated differently from municipalities, in a manner seen by the local authorities as patronising. The public entities, and Sint Eustatius in particular, had been opposed to this from the start. Although the intervention on Sint Eustatius was necessary, the report of the Committee of Wise Men showed that change was needed on the part of the central government to ensure equal treatment for the Caribbean part of the Netherlands.<sup>16</sup>

However, the decision to intervene was not taken lightly. The situation on Sint Eustatius made it clear that, in the event of serious administrative shortcomings on the part of a public entity, the central government quickly runs out of options: in practice, the administrative and financial supervision included in WolBES and FinBES only offers limited possibilities for inducing public entities to make improvements. This leaves citing gross dereliction of duty as the only option, yet this is a drastic and undesirable step because of its impact on local democracy and self-government. It should also be noted that possible solutions to prevent gross dereliction of duty may also lie outside the scope of the legal instruments.

#### *1.4.3 Section 1 of the Charter and an amendment of the Constitution*

At the level of the Kingdom, the constitutional reform is regulated by the Act Amending the Charter for the Kingdom of the Netherlands in Connection with the Abolition of the Netherlands Antilles (Rijkswet tot wijziging van het Statuut in verband met de opheffing van de Nederlandse Antillen). Under the terms of this act, the country of the Netherlands Antilles was abolished, the island territories of Curaçao and Sint Maarten acquired the status of constituent countries in the Kingdom, and the island territories of Bonaire, Sint Eustatius and Saba became part of the Dutch constitutional system. Aruba had had temporary 'status aparte' within the Kingdom since 1986. By an Act of 15 December 1994, the legal order laid down in the Charter with regard to Aruba, and with it the island's status as an independent country within the Kingdom, was continued.

After 10/10/10, Bonaire, Sint Eustatius and Saba were initially established as public entities within the meaning of Article 134 of the Constitution. This provision offers fairly broad possibilities for all kinds of decentralisation within the Netherlands. Administrative arrangements had already been made on this basis for other areas that, for various reasons, did not fit into the normal structure of territorial decentralisation, such as the Southern IJsselmeer polders (from 1955 to 1996) and the towns of Elten and Tudderren (from 1949 to 1963).

On Bonaire, Sint Eustatius and Saba, however, there is a local community that is very similar to municipalities in the sense that the administration is close to the citizen. There are also many similarities in terms of local tasks, although unlike municipalities, the public entities also have tasks that are more comparable to those of the national government (see Paragraph 2.2.2). Despite the similarities with municipalities, the Constitutional safeguards for municipalities did not apply to public entities at the time. Moreover, the principle was enshrined in the Constitution that the Netherlands was territorially divided into provinces and municipalities. The organisation of the islands as public entities for an indefinite period would therefore have been undesirable without an amendment of the Constitution. The Council for Public Administration and the Council for Financial Relations therefore recommended in the run-up to the constitutional reform that the Constitution be amended on this point if it was concluded in the course of time that public entity status would remain the best possible solution for the islands in the future.<sup>17</sup> If this was the case, it would need to be explicitly stated in the Constitution that this situation applied exclusively to public entities in the Caribbean part of the Netherlands. This is what happened following the evaluation of the constitutional structure in 2015, with the addition of Article 132a in the Constitutional revision of 17 November 2017. This article states that the Constitutional frameworks that apply to

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<sup>16</sup> Parliamentary Papers II 2017/18, 34 877, no. 3, p. 42-44

<sup>17</sup> Advice on legislation concerning the public entities Bonaire, Sint Eustatius and Saba (BES), Council for Public Administration, 23 September 2008

municipalities also apply to Bonaire, Sint Eustatius and Saba. In addition, it is made clear that the islands' public entity status cannot apply to other parts of Dutch territory.

The basis for differentiation between the Caribbean Netherlands and the European Netherlands was regulated in Section 1(2) of the Charter until 17 November 2017. It was stated there that rules could be laid down for Bonaire, Sint Eustatius and Saba and other specific measures taken in view of *'the economic and social circumstances, great distance from the European part of the Netherlands, insular character, small area and population, geographical conditions, climate and other factors that make these islands substantially different from the European part of the Netherlands'*. In the constitutional revision, this provision was moved to Article 132a(4) of the Constitution, and more general wording was used than the specific list of factors in the old Section 1(2) of the Charter, namely *'the special circumstances that make these public entities essentially different from the European part of the Netherlands'*. However, the intention here was not to change the material meaning, so the old provision from the Charter still offers an important guide to the interpretation of the Constitutional possibility of differentiation.<sup>18</sup>

#### *1.5 Council of State Advice and recommendations of Interdepartmental Policy Study*

Given the government's ambition of further improving socio-economic prospects in the Caribbean Netherlands, there was a desire to identify the opportunities for and obstacles to achieving more effective policy for the islands. As previous enquiries had shown that the desired progress had not yet been made, with issues relating to poverty, socio-economic development, physical infrastructure and good governance, in 2018 the State Secretary for the Interior and Kingdom Relations asked the Advisory Division of the Council of State to provide advice. The aim was to promote the well-being of citizens in the Caribbean Netherlands as much as possible, on the basis of the principle that all Dutch people are treated equally.

At the same time, an Interdepartmental Policy Study (Interdepartementaal Beleidsonderzoek; IBO) was also conducted into government policy with regard to the Caribbean Netherlands. This was prompted by the picture that had emerged from several studies, suggesting that policy from the European Netherlands regarding the public entities was fragmented and disjointed and that the approach and efforts of Dutch ministries varied. Funding for the islands' administrative tasks was also said to be inconsistent and unclear. The IBO working group was given the task of drawing up substantiated variants for an alternative policy approach with an appropriate financial structure, and mapping out opportunities for improvement and scenarios for strengthening the coordinating role of the Ministry of BZK in the field of Kingdom Relations.

The results of the two studies were presented to the government and the two Houses of the States General in rapid succession. The report *'Samen-Werken'* (*'Working Together'*) of the IBO working group appeared on 10 June 2019<sup>19</sup> and the Advice of the Advisory Division of the Council of State on 17 July 2019.<sup>20</sup> The government responded on 4 October 2019, promising adjustments to WolBES and FinBES, among other things.<sup>21</sup> The government also answered various questions concerning the government's response in a letter on 26 May 2020.<sup>22</sup>

The Advice of the Advisory Division of the Council of State and the results from the IBO related, among other things, to the existing structure of relations between the Caribbean Netherlands and the European Netherlands, the administrative and executive power of the public entities and the coordinating role of the Ministry of BZK. The main points can be summarised as follows:

- Develop an integrated and government-wide vision in which the different policy areas are coordinated and in which all ministries and public entities are involved;

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<sup>18</sup> Parliamentary Papers II 2011/12, 33 131, no. 3, Para. 5.

<sup>19</sup> Annex to Parliamentary Papers II 2019/20, 35 300, IV, no. 11.

<sup>20</sup> Annex to Parliamentary Papers II 2019/20, 35 300, IV, no. 11.

<sup>21</sup> Parliamentary Papers II 2019/20, 35 300, IV, no. 11.

<sup>22</sup> Parliamentary Papers II 2019/20, 35 300, IV, no. 53.

- Improve cooperation and coordination in The Hague, in the Caribbean and between the two, and include the current division of tasks in this;
- Invest in the quality and decisiveness of the local government and the official organisations;
- Tackle backlogs step by step and ensure appropriate, sustainable funding and suitable laws and regulations;
- Make differentiation possible between the islands.

The Advisory Division of the Council of State describes two situations: the long-term situation aspired to, in which responsibility for formulating, coordinating and implementing policy and for the financial side of this is assigned as much as possible to the islands; and the transitional phase in the short and medium terms, in which the islands and the central government work together towards the long-term situation. Although various recommendations of the Advisory Division of the Council of State necessitate changes to the law, the Advisory Division of the Council of State does not consider it necessary or advisable to make changes to the main elements of the constitutional structure. This means that the status of the islands as public entities within the decentralised unitary state of the Netherlands will be maintained. The Advisory Division of the Council of State also considers it necessary to treat the public entities individually and to ensure that they have sufficient financial resources and administrative and executive power to implement the islands' tasks and competencies.

In concrete terms, the Advisory Division of the Council of State proposes in its Advice that the position of kingdom representative should be abolished. In the transitional period, the island governments need to be reinforced and the Minister of BZK will play a role corresponding to that of the king's commissioner. The position of kingdom representative would become superfluous in this context. The provision of support by the island governor is recommended. In addition, the Advisory Division of the Council of State recommends the development of differentiated supervision models for WolBES and FinBES, and criteria for deciding which model should apply. In this way, proper account can be taken of the islands' individual characteristics and of the fact that Bonaire, Sint Eustatius and Saba are at different stages in terms of implementing the constitutional reforms. In the lighter supervision model, the emphasis is on the control mechanisms that exist within the public entity itself, such as notification obligations or approval requirements. In the stricter models, the central government should play a greater role, according to the Advisory Division of the Council of State. In its response to the Advice of the Advisory Division of the Council of State, the government indicated that it would adopt these recommendations in principle and develop them further. The proposals for the revision of financial supervision are also consistent with the comments of the General Court of Auditors on the supervision of financial management on the islands by the Ministry of BZK and Cft BES in the accountability audits in 2018 and 2019.<sup>23</sup>

The IBO working group mainly makes policy recommendations, in which the formulation of an integrated vision with regard to Bonaire, Sint Eustatius and Saba is central. To develop this vision in detail, it is recommended that a clear division of tasks be defined between the public entities and the central government and among ministries; that the coordinating role of the Ministry of BZK be reinforced; that cooperation between ministries be improved; and that understanding of the local situation on the islands and of the differences between the islands themselves be increased. Although these recommendations have no direct consequences for WolBES and FinBES, they serve as prerequisites for strengthening administrative relations and thus for achieving the goals pursued by the present bill.

## **2. Towards better inter-administrative relations**

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<sup>23</sup> Accountability audit results 2018; Kingdom Relations (IV) and BES Fund (H); Report on the annual report, General Court of Auditors, 15 May 2019 and Accountability audit results 2019; Kingdom Relations (IV) and BES Fund (H); Report on the annual report, General Court of Auditors, 20 May 2020.

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## 2.1 Policy vision

### 2.1.1 Envisioned situation

The government wants to work towards greater clarity in policy for the Caribbean Netherlands and the safeguarding of the equality of the Caribbean Netherlands as part of the Netherlands. The aim of the Ministry of BZK with this in mind is that the Caribbean Netherlands will ultimately work towards the European Dutch system in terms of level of facilities and services<sup>24</sup>; in line with the decentralisation in the European Netherlands, responsibility for formulating, coordinating, executing and enforcing policy will lie at local level as far as possible. In other words, collaboration where necessary, independence where possible<sup>25</sup>. Account will be taken of the fact that the public entities have a different set of tasks from that of the European Dutch municipalities, and must therefore be appropriately equipped. Inextricably linked to this is the need to bring local administrative and executive power to the level where the public entity is able to handle such decentralisation.

The 'comply or explain' principle is essential in the period in which the envisioned situation is being worked towards. This principle is embraced by the government in its response to the Council of State Advice and the IBO working group. 'Comply or explain' refers to the basic assumption that new European Dutch policy goals or policy intensifications, including any associated new regulations, should also be applicable to the Caribbean Netherlands, unless there are reasons why this should not be the case.<sup>26</sup>

In view of the special circumstances that make the Caribbean Netherlands substantially different from the European part of the Netherlands, it may be decided to introduce different rules and measures for the Caribbean Netherlands.<sup>27</sup> However, this must be weighed up against the importance of achieving an equivalent effect. Differences between the public entities must also be taken into account. Where the European Dutch situation is deviated from, this must be done on the basis of sound argumentation and after consultation with the public entities. This will ensure that differing treatment of the Caribbean Netherlands is not seen as a unilateral decision by the central government, but as a supported decision in the interest of the Caribbean Netherlands.

For existing regulations and policy, too, the ambition is to harmonise where possible and differentiate where necessary. The existing legislative backlog will be gradually eliminated in the next few years, further promoting equality between citizens in the European Netherlands and the Caribbean Netherlands.<sup>28</sup> Working towards the European Dutch system also means that, in line with the decentralisation principle, the aim is to create a situation in which the Caribbean Netherlands carries out as many tasks itself as possible.

To actually achieve this vision of the future, the basics need to be sorted out properly. To this end, the central government will focus in the years ahead on objectives on which the progress that was desired and expected by the Caribbean Netherlands and the central government has not been achieved since 10/10/10, and which are prerequisites for the administrative and socio-economic development of the Caribbean Netherlands.

### 2.1.2 Goals

The goals to be achieved are broken down as follows:

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<sup>24</sup> Parliamentary Papers II 2021/22, 35925-IV, no. 42

<sup>25</sup> To quote the title of the 2019 IBO Working Group report: Annex to Parliamentary Papers II 2019/20, 35 300, IV, no. 11.

<sup>26</sup> Parliamentary Papers II 2021/22, 35925-IV, no. 42

<sup>27</sup> Article 132a(4) of the Constitution.

<sup>28</sup> Parliamentary Papers II 2021/22, 35925-IV, no. 42

1. Contents:
  - Social security and basic services are in order
  - Sustainable economic development of the Caribbean Netherlands
2. Administration:
  - Reinforced administrative and executive power
  - Sound public administration
3. Finances:
  - Sufficient financial resources for the tasks
  - Maintenance backlog eliminated
  - Financial management in order

The goals (and the underlying vision) are in line with the ambitions set out in the 2021-2025 coalition agreement, in which the citizen is central and social security for everyone is fundamental. Work needs to be done to ensure this by a strong government that is reliable and delivers. This also applies to the Caribbean Netherlands: *'In the Caribbean Netherlands we will continue our efforts to make Bonaire, Saba and Sint Eustatius an equal part of the Netherlands.'*<sup>29</sup>

The goals to be achieved also relate to areas such as poverty, infrastructure, accessibility, climate and education, and thus to policy that is often the responsibility of other ministries. On the basis of the 'comply or explain' principle, the Caribbean Netherlands will be included in the policy ambitions of the different ministries and the associated budgets as stated in the coalition agreement (e.g. education, the employment market, poverty and debt, increasing the minimum wage, climate, sustainability). In addition, the Caribbean Netherlands will see a significant improvement in the possibilities for implementing island-related tasks and powers through the expenditure of some of the €30 million systematically earmarked for the Caribbean Netherlands every year.

## *2.2 General principles with regard to the inter-administrative relationship*

The bill has been drafted with the envisioned situation as described in the policy vision (Paragraph 2.1) in mind. To work towards the envisioned situation, multi-year administrative agreements are being drawn up together with the island governments of Bonaire, Sint Eustatius and Saba on the basis of the separate visions of the public entities. This will include the implementation of the priorities set by the Public Entities and the reinforcement of administrative and executive power. The speed with which the envisioned situation is achieved depends on the efforts of both the central government and the public entities. The present bill is an important step in this direction. This bill is based on various principles that are important for successfully achieving the envisioned situation.

### *2.2.1 The constitutional position of the islands as public entities remains unchanged*

The constitutional position of the islands as public entities remains broadly unchanged. Briefly, this means that the public entities have a Constitutional position as a local authority within the country of the Netherlands that closely resembles that of the municipalities, but with room to regulate certain matters differently in view of special circumstances that make these public entities essentially distinct from the European part of the Netherlands. With the addition of Article 132a to the Constitution on 17 November 2017, it has been confirmed that public entity status with the application of Constitutional standards that also apply to municipalities and provinces is seen as the best possible solution for Bonaire, Sint Eustatius and Saba in the future (see also Paragraph 1.4.3).

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<sup>29</sup> Coalition agreement 2021-2025 'Omzien naar elkaar, vooruitkijken naar de toekomst' ('Looking out for each other, looking ahead to the future'), 15/12/2021, p.4

The islands' special position as public entities offers advantages for both the local authorities and the central government, especially when it comes to tailoring the implementation of national regulations, thereby making it possible to mitigate the heaviest administrative burdens on the islands. The government takes the view that no fundamental changes in the constitutional position of the public entities are desirable or necessary at present. Bonaire, Sint Eustatius and Saba have a history of frequent drastic changes to constitutional relations, the most recent of which was the transition to local authority status within the country of the Netherlands on 10/10/10. The government does not consider a revision of the main structure appropriate.

This does not alter the fact that within the current constitutional framework there is room for improvements in the administrative and financial position of the public entities. The drastic constitutional change from 10/10/10 still requires time and attention to this day. In its own way, each of the public entities is still in a transitional phase. This bill is an important next step in the constitutional transition. This will be discussed in more detail in the following paragraphs.

### *2.2.2 Bonaire, Saba and Sint Eustatius as an equal part of the Netherlands, taking the special circumstances into account*

The context on the Caribbean public entities differs from that of the municipalities in several ways. Reference has already been made to the economic and social circumstances, great distance from the European part of the Netherlands, insular character, small area and population, geographical conditions and climate. In practice, this special context means that the public entities are responsible for certain tasks that in the European Netherlands are entrusted to the central government, the province or a water management board instead of the municipalities. For example, utilities, wastewater treatment, access by air and water and the management of protected maritime areas have to be arranged locally in the public entities. This means that the public entities not only need more resources, but also more expertise than a municipality with a comparable population. It should also be noted that each of the public entities has its own context and challenges. For example, Bonaire faces very rapid population growth, an oil storage and transshipment terminal is located on Sint Eustatius with all the associated environmental and other responsibilities, and Saba is responsible for managing one of the largest atolls (coral plateaus) in the world.

In the context of this bill, the main differences between the public entities and municipalities are:

1. The relatively large set of tasks and responsibilities of the public entities, which are also responsible for certain tasks that are imposed on the central government, the province or a water management board rather than on municipalities;
2. The lack of a provincial intermediate layer;
3. The small scale of the islands, including the small scale of the local authority;
4. The islands' status as relatively young administrative entities within the country of the Netherlands;
5. The partly deviating legal frameworks, because Dutch legislation has not been adopted one-to-one for the Caribbean Netherlands;
6. The insularity of the communities;
7. The physical distance between the different islands and between the Caribbean Netherlands and the European Netherlands;
8. The far more direct contact between the individual public entities and the central government, with the role of umbrella organisations such as the Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten; VNG) or the Aldermen's Association (Wethoudersvereniging) being much more limited;
9. The differences between the public entities themselves.

The importance of some of these aspects is expected to decrease as the envisioned situation becomes more of a reality. Points 4 and 5 in particular are expected to play a smaller role in the long term.

### *2.2.3 Mutual trust*

When the islands were established as public entities, a stricter supervisory regime than that used for the municipalities was opted for. This was for a situation in which a new administrative structure had been set up within the former Netherlands Antilles and in which the islands and the central government had to find their way. The stricter supervision and more stringent requirements provided means of maintaining an overview and intervening promptly where necessary. The situation is now different. The public entities and central government have more than a decade of experience with the new administrative structure and have gained insight into what does and does not work. It has become clear that the way in which WolBES and FinBES are structured has not always been good for administrative relations and mutual trust, partly because the public entities were given too little room to perform tasks as they saw fit.

In the future, work must be based on mutual trust, with the frameworks within which the public entities can operate being broadened out by easing supervision where possible. Where possible, policy should be formulated, coordinated and implemented by the public entities themselves. This makes sense, as the local government is close to the citizens, has the best understanding of what is needed and what is a priority, and can involve citizens in policy-making processes. The central government cannot fulfil such a role. The central government wishes to give the public entities the confidence and space to perform tasks independently, but to be able to take action if a public entity is unable to perform a certain task properly or needs support to do so, or if vital facilities or services are endangered. A tailored approach is therefore important, but this should not be at the expense of administrative predictability and resilience.

In addition, administrative relations should be designed in such a way that mutual trust is facilitated as much as possible or disrupted as little as possible. An unambiguous approach from the central government and the coordinating role of the Ministry of BZK in this form an important basis for strengthening the relationship of trust. Proper representation of the interests of the public entities to the central government is a prerequisite and will be implemented more effectively.

#### *2.2.4 Strengthening the freedom of the local authority within the decentralised unitary state*

It is enshrined in the Constitution that the Netherlands is a decentralised unitary state. This means that tasks, powers and responsibilities are assigned to different levels. The public entities have a general power of regulation and administration, which can only be limited by or pursuant to the law. However, the local authorities (public entities, municipalities, provinces and water management boards) are obliged to cooperate in the implementation of rules set by higher authorities and may be subject to supervision by or pursuant to the law.

In the European Netherlands, the foundations for this principle are established in, among other things, the Code of Inter-Administrative Relations (Code interbestuurlijke verhoudingen) and the European Charter of Local Self-Government (Europees Handvest voor Lokale Autonomie; hereinafter: ECLSG), which set guidelines for administrative relations and further safeguard the position of the local authorities.

The Code of Inter-Administrative Relations contains agreements that contribute to cooperation between authorities, with the aim of tackling social challenges more quickly and effectively and with democratic legitimacy. Even though the ECLSG and the Code of Inter-Administrative Relations are not yet directly applicable to the Caribbean Netherlands, it has been decided to apply the principles formulated in them in a substantively comparable manner for the public entities, by analogy with their application to municipalities. The ECLSG is based on the concept of local self-government, which is defined as the right and capacity of local authorities, within the limits of the law, to regulate and manage a significant proportion of public affairs under their own responsibility and in the interests of the local population. This principle is of great importance for the desired position of the public entities, and this bill aims to strengthen this local self-government. The concept of local self-government should not be confused with the concept of autonomy, which is related to joint governance and is important for inter-administrative supervision.

When the Code of Inter-Administrative Relations is updated, it will be stated in consultation with the public entities that the Code also applies in principle to the Caribbean public entities.

A clear division of tasks and clarity about financial flows is also important for both the autonomy of the islands and the targeted and efficient involvement of the central government. In line with the advice of the Council of State and the IBO Working Group, the Ministry of BZK is reassessing the division of tasks in collaboration with other ministries and the public entities. On the basis of this, agreements will be made between the public entities and the central government and among the ministries concerning the division of tasks and associated financial resources. This includes looking at the complexity of tasks in relation to the executive power of the public entities and the public interest aspect of certain tasks. A tailored approach will be required here, and it will also be necessary to consider to what extent responsibilities must or can be shifted in the future. For example, the division of tasks closely touches on the free grant, administrative and executive power and the elimination of backlogs.

#### *2.2.5 A tailored approach*

The Advisory Division of the Council of State emphasises the importance of taking an individual approach to the various islands. This is because of the differences that exist between the islands.<sup>30</sup> In terms of legislation – WolBES and FinBES – there are also reasons to include possibilities for a tailored approach. Bonaire, Sint Eustatius and Saba are each at a different stage with regard to the implementation of the constitutional reforms. The nature of the administrative backlogs and thus the local approach to them also varies between the public entities. A tailored approach is therefore necessary with regard to inter-administrative relations. In terms of legislation, in concrete terms this means using a tiered model of financial supervision. If tasks are performed properly and in accordance with the relevant legislation by the public entity, there will be a light supervisory level, which is more comparable to the supervision of municipalities. If the situation calls for it, the Minister of BZK may decide that stricter financial supervision will be imposed. This assessment within FinBES will be elaborated on further on the basis of a supervisory framework that has yet to be drawn up.

The proposed supervision model for FinBES is based on the supervision of municipalities, with due regard for the relevant differences and the adoption of a varied approach on those points. See Paragraph 4.5 of FinBES on this.

Although there are also small municipalities in the European Netherlands, the public entities are different from these. In the European Netherlands, for example, there are numerous opportunities for collaboration at both municipal and provincial level, which can partly resolve problems of scale. In the Caribbean Netherlands, this is more difficult due to the distances involved, insularity and the lack of a provincial layer. Another factor is that it is less easy for the public entities to make use of facilities and services outside their own borders, which means that more has to be arranged on the islands themselves.

#### *2.2.6 Coordinating role of the Ministry of BZK*

A strong coordinating role for the Ministry of BZK will also contribute to the successful achievement of the aforementioned goals. The starting point is that ministerial responsibility remains an important and valid principle. Specialist ministers have system responsibility for ministry-specific matters. They retain the power to decide how funding, coordination and executive power will be implemented in their ministries and hence how their system responsibility in relation to the Caribbean Netherlands will be fulfilled. This also guarantees the necessary involvement and expertise of the individual ministries.

In addition to its own tasks, the Ministry of BZK has a coordinating role with regard to government policy affecting the Caribbean Netherlands. To enable it to perform this role properly, other ministries are required to consult with the Ministry of BZK at an early stage about any measures or proposals that are significant for central government policy on the public entities<sup>31</sup>, and the

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<sup>30</sup> See also Section 137 of WolBES and Article 132a(4) of the Constitution.

<sup>31</sup> Section 211(2) of WolBES



Minister of BZK raises concerns if a measure or proposal seems incompatible with the decentralisation principle.<sup>32</sup> In addition, the Minister of BZK, in cooperation with the Minister of Finance, has a coordinating role in the provision of special purpose grants.<sup>33</sup> In the case of central government policy proposals that lead to a change in the performance of duties or activities by the public entities, ministries must also explain the financial consequences for the public entities, indicate the funding method that will be used to take account of these financial consequences and communicate in a timely manner on this subject with the Ministers of BZK and Finance.<sup>34</sup>

Good coordination is also important to promote decentralisation for the benefit of the Caribbean Netherlands<sup>35</sup> and to ensure that central government policy reaches the islands in coherent form. This means, among other things, that there should be an integral assessment and prioritisation of policy proposals.<sup>36</sup> The Ministry of BZK does this partly by facilitating interdepartmental consultation, with a focus on tailored solutions for the Caribbean Netherlands. In recent years, the Ministry of BZK has assumed a coordinating role in the development of the Bonaire Administrative Agreement (Bestuursakkoord Bonaire) and the Saba Package, in which joint goals of the central government and public entities are agreed. The Ministry of BZK also coordinates the implementation of these agreements, which has led to visible results on the islands in recent years.

In line with the advice of the IBO working group and with due consideration for the recent Island Council elections, the coordinating role of the Ministry of BZK should be complemented by a directing role for the development of multi-year administrative agreements between the Public Entities and the central government. The priorities and planning for each island will be set out in the implementation agendas, with the European Dutch level as the starting point. After the implementation agendas have been adopted, the Ministry of BZK will oversee the stability, continuity and clarity of central government activity and contact with the Caribbean Netherlands, without – as stated – detracting from the responsibilities of the individual ministries. From an overarching perspective, the Ministry of BZK will identify interfaces and facilitate interdepartmental coordination if necessary. Based on its knowledge of and contacts with the Caribbean Netherlands, the Ministry of BZK will advise and monitor, seeking to ensure coordination between the public entity and relevant ministries where necessary. The coordinating role of the Ministry of BZK will also involve helping ensure a mature and fully developed local capacity for the performance of the island's tasks and responsibilities, including with regard to the local recruitment of external expertise on a temporary or permanent basis. When problems arise in implementation or decision-making, an important aspect of this role is organising political decision-making on particular matters and transparency about this towards the Caribbean Netherlands, to make it possible to set concrete goals to which different government ministries are willing to commit. Transparency also means that both Houses of the States General should be informed about the policy choices that are made and the interests that have been weighed up in the process.

The enhanced coordinating role of the Ministry of BZK will be reflected in organisational instruments and structures as follows:

- Integrated agendas across central government to determine the jointly formulated goals and ensure focused efforts by the central government and the Caribbean Netherlands. These will be comparable to and, where relevant, will also build on the administrative agreements as concluded with Bonaire and Saba that have been implemented in recent years. The implementation agendas will be drawn up together with the Caribbean Netherlands.

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<sup>32</sup> Section 211(3) of WolBES

<sup>33</sup> Sections 91 and 94 of FinBES

<sup>34</sup> Section 87 of FinBES

<sup>35</sup> Section 212 of WolBES

<sup>36</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p.113

- The Steering Committee on the Caribbean Parts of the Kingdom of the Netherlands (Stuurgroep Caribische delen van het Koninkrijk der Nederlanden), in which senior officials from all ministries are involved and decision-making takes place on interdepartmental issues. By making internal coordination and decision-making possible, the Steering Committee will contribute to a reinforced integrated policy. The Steering Committee will be preceded by official policy consultations in which the coordinators of Caribbean-related matters from the various ministries will participate;
- Interdepartmental consultations between directors on specific topics, focusing on the vision that work is taking place in the Caribbean Netherlands towards a level of provision equal to that of the European Netherlands. Matters will be discussed during these consultations in preparation for the Steering Committee, with a view to ensuring rapid decision-making. This will make a more efficient decision-making agenda possible for the Steering Committee.
- The interdepartmental working group CN-legal, in which legislative aspects of the Caribbean Netherlands are discussed and the integrated nature of legislation is monitored. In particular, the legal departments of all ministries are represented here. Recently, the lawyers of the Caribbean Netherlands and the kingdom representative have also taken part.
- A Caribbean Netherlands project team which, among other things, provides input of a more substantive nature on how to apply the 'comply or explain' principle. This should ensure that the principle is applied consistently by all ministries;
- A legislative overview drawn up in the context of 'comply or explain', including laws and regulations that are needed to resolve specific problems; in this connection, overdue legislative amendments have been/will be carried out, wide-ranging framework legislation has been/will be drawn up and a response to requests from the Caribbean Netherlands is being provided. In this way, legislation in the Caribbean Netherlands will be brought up to date where necessary and aligned more closely with legislation in the European Netherlands. Both Houses of the States General will be given periodic updates about this;
- The possibility of restarting administrative consultations of the kind customary at the time of the so-called CN weeks is also being investigated. These consultations would contribute to decision-making on sensitive and complex interdepartmental issues. In order to keep the consultations focused and facilitate concrete decision-making, it is recommended that they be organised thematically, with a focus on the key issues mentioned earlier.
- The reorganisation of the RCN, based in part on input from the local population. The aim of this would be to organise local services in a more integrated and uniform manner in collaboration with the public entity.
- The official committee for the assessment of special purpose grants. This started in January 2022 and was established in line with the advice from the report of the General Court of Auditors of 2021.<sup>37</sup> In any event, the committee will include representatives of the Ministry of BZK and the Ministry of Finance. All special purpose grants must be submitted to this committee, after which they are briefly assessed. The aim is to ensure that special purpose grants are bundled together as much as possible and that the procedures for the provision of such grants from the ministries are unambiguous and contain the correct basis.

### *2.2.7 Attention to feasibility of implementation in the public entities: administrative pressure and capacity*

Facilitating laws and regulations alone are insufficient to support the public entities in their ambition to increase the effectiveness of the local administrations and to improve administrative relations between the public entities and the central government. The public entities must have the right capacity, knowledge and resources at both administrative and official level in order to continue developing and to fulfil their duties and powers properly. In addition, it is important for

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<sup>37</sup> Parliamentary Papers II 2020/21, 35 570, VII, no. 103 (annex)

the administrative workload for the public entities to be kept to a minimum and for attention to be paid by the central government to implementation. The public entities' special situation also presents opportunities. For example, there are opportunities in the field of citizen participation thanks to the islands' small size and strong communities, and partnerships with surrounding islands can also be considered in view of their location.

However, it is clear that further improvements are needed to ensure that the public entities have sufficient capacity, knowledge and resources to perform their duties and powers properly. The position and effectiveness of the island governor, island secretary (eilandsecretaris), executive council and island council play an important role in this, but it is also essential to strengthen the civil service to make local administration more effective. Another factor in improved executive power is greater cohesion between the public entities and the RCN, as this adds to the possibilities for supporting the public entities and the efficiency of public services. In addition, having sufficient resources also means that resources are available to eliminate the backlog in terms of infrastructure and social services.

#### *2.2.7.1 Administrative power*

The island councils and executive councils will also receive support with fulfilling their role more effectively. The ways of doing this include the following:

- Increasing the number of island council members and executive council members. See Paragraph 3.3 on this.
- Improved support for island council members and executive council members. This will be achieved by making resources available to party workers and administrative advisers and by focusing on the quality and capacity of the registry. Temporary reinforcement and knowledge exchange can be achieved through exchanges with municipalities and ministries, but also within the region. Ultimately, the presence of knowledge and skills needs to be ensured locally, and training plays a role in this. More systematic organisation of training courses (e.g. annual refresher training and a fixed training programme for new council members) should help to make the island councils and executive councils more effective in the long term. In addition, procedures that are more stringent, clearer and simpler, including rules of procedure and a focus on digitisation of internal decision-making, will lay the foundations for more efficient and structured decision-making. The phased increase in the number of island council members and executive council members will also be explicitly taken into account in this context.
- Encouraging youth participation and civic participation. Youth participation gives young people the opportunity to learn about politics at an early age and gain useful political skills (e.g. through a form of involvement in decision-making). Youth participation and civic participation in general help to increase the supply and diversity of local politicians. In addition, they enable local citizens to contribute ideas about local decisions. Depending on the extent to which participation is formalised, this can also provide a form of oversight over the local administrations. In collaboration with UNICEF, the Ministry of BZK has started encouraging youth participation. Civic participation can be organised through citizen council membership, a social advisory council or other opportunities. The Ministry of BZK also wishes to facilitate this at the public entities in the years ahead.
- Periodic peer-to-peer island visits. Another way of strengthening administrative power is by organising periodic visits to the different public entities by a committee of external, independent colleagues (specifically administrative office-holders from other local authorities) to see how they work and contribute ideas about how good governance can be reinforced. This is 'an on-the-spot peer review of the organisation'.<sup>38</sup> Such visits must take place on a voluntary basis and on the basis of trust and equality, and must be carried out by competent, independent and constructively critical reviewers who conduct the discussion in an unprejudiced and open-minded manner. This is a tool that is separate

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<sup>38</sup> Review factsheet [https://www.kcwj.nl/sites/default/files/Factsheet\\_Visitatie.pdf](https://www.kcwj.nl/sites/default/files/Factsheet_Visitatie.pdf)

from the tools for inter-administrative supervision, as the island visits primarily serve to support the public entity. The experience gained in this way can also be used to further shape the policy framework required for supervision. Consideration is also being given to whether the public entities in turn can hold reviews of Dutch municipalities.

#### *2.2.7.2 Executive power*

A strategy has been drawn up in collaboration with the public entities for strengthening executive power. This will certainly build on initiatives that have been set up in recent years to strengthen the civil service, such as TOP Bonaire, a process that offers local career and development opportunities to young professionals with Caribbean roots, and on the activities in connection with the current administrative agreements. As the needs in terms of civil service reinforcement and development differ per island, a tailored approach is important. In the future, the government wants a systematic increase in investment in training programmes, exchange programmes, technical assistance and internships.

For example, the Ministry of BZK is working on an exchange network in collaboration with the Association of Dutch Municipalities for a more systematic form of exchange of knowledge and expertise. Where possible, other ministries, provinces and water management boards will also join in. On the basis of their knowledge and experience, officials from the European Netherlands will be sent from this network to the Caribbean Netherlands at locations where this knowledge and experience are needed. Conversely, officials from the Caribbean Netherlands will also be seconded to municipalities or a ministry in order to gain experience and broaden knowledge. The aim is, among other things, to strengthen the civil service, fill key positions properly and quickly (temporarily or permanently) and make better use of knowledge, skills and capacity.

In addition, the necessary structural reinforcement of the civil service must also be taken into account in the amount of the free grant.

#### *2.2.7.3 National Office for the Caribbean Netherlands*

The RCN acts as a link between the central government and public entities and between the ministries present on the islands. It provides local support for and services from the various ministries, each of which is responsible for the implementation of its own policy. As such, it is also an important face of the central government on the islands.

Over the past ten years, efforts have been made to improve the services it provides and further steps are being taken. However, opportunities remain to improve service provision from the perspective of the local people. There are fragmentation and compartmentalisation due to the large number of offices where services are provided to the public, the numerous procedures and the very limited cooperation between the RCN and the public entities. Some aspects of information management are still being developed and a coherent Caribbean Netherlands approach based around assignments, irrespective of subject area, is lacking. The service-providing competencies are also still being actively developed.

It has already been stated that citizens should be served from a single point of contact, regardless of whether the central government or the public entity is responsible and regardless of which ministry is involved. However the tasks are divided and whatever form their implementation takes, citizens must not be inconvenienced as a result. To achieve this aim, the RCN has been given explicit responsibility for working towards greater integration, cohesion and uniformity of service provision.<sup>39</sup> The government is focusing on the following areas in this context:

- improving specific service provision processes from the islanders' viewpoint. This means decompartmentalisation and more cooperation;
- further digitisation. This involves putting the digital fundamentals in place and coming up with a coherent digitisation approach for the Caribbean Netherlands;

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<sup>39</sup> Parliamentary Papers II 2019/20, 35 300 IV, no. 11 and Parliamentary Papers II 2021/22, 35 925 IV, no. 60

- putting the public entities' civil affairs departments in order, in terms of service provision, but also putting the basic records in order;
- identifying more accurately the islanders' perceptions of the services provided and what suggestions they have for improvement.

A new director/supply officer took office in December 2022, and will start working on the RCN transition plan and the cooperation between RCN and the public entities.

### *2.2.8 Appropriate supervision*

#### *2.2.8.1 Main elements*

One aspect of administrative relations is supervision. Supervision can be seen as collecting information about whether an action or matter meets the relevant set requirements, forming a judgement on this and if necessary intervening as a result.<sup>40</sup> Inter-administrative supervision is one of the forms of supervision and can be defined as: 'the totality of the processes taking place in the context of the legal relationships between the central government, the provinces, the municipalities, common regulations and the water management boards and concerning the assessment by higher authorities of the management of tasks by lower authorities'.<sup>41</sup> Inter-administrative supervision must be seen within the context of the Netherlands as a decentralised unitary state. The decentralisation of tasks to the public entities, but also to municipalities and provinces, which usually carry them out on a joint governance basis, implies the central government's confidence concerning the performance of these tasks and respect for the freedom of the local administration. Nevertheless, inter-administrative supervision is a means of ensuring the 'unitary character' of the decentralised unitary state by means of various vertical instruments for influence and control. This is part of the system of vertical checks and balances between administrative levels.

This bill regulates two forms of administrative supervision: inter-administrative supervision with generic instruments in WolBES and the financial supervision resulting from FinBES. In the first form of supervision, the following generic instruments apply and can be used to intervene in the performance of duties and exercise of powers by the public entity:

1. the 'spontaneous' annulment by royal decree of decisions of administrative bodies of the public entities on the grounds of conflict with the law or the public interest (Articles 132(4) and 132a(2) of the Constitution);
2. taking a measure in the event of neglect of joint governance tasks by administrative bodies of the public entities (Articles 132(5), first sentence, and 132a(2) of the Constitution). This is different from gross dereliction of duty (Articles 132(5), second sentence, and 132a(2) of the Constitution), in the case of which only the formal legislator can intervene. In addition, gross dereliction of duty may relate to either self-government or joint governance tasks. The arrangements that apply in the event of gross dereliction of duty fall outside the scope of this bill.

Financial supervision concerns administrative supervision in connection with the public entity's financial organisation. Broadly speaking, this involves supervision of the budget cycle and financial management. In addition, there are a few specific points, such as the relationship with private legal entities and the disposal of assets. FinBES contains rules on financial supervision.

At present, relatively strict supervisory instruments are included in WolBES and FinBES, and it is hoped that the supervision of the public entities can be gradually reduced in the long term. This

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<sup>40</sup> Parliamentary Papers II 2009/10, 32 389, no. 3, p. 2.

<sup>41</sup> Bestuurlijke Werkgroep Alders, 'Interbestuurlijk toezicht herijkt – toe aan nieuw zicht op overheden' ('Inter-administrative supervision recalibrated – time for a fresh vision of authorities'), 2005, published as an annex to Parliamentary Papers II 2005/06, 30 300 VII, no. 50, p. 17.

has also happened to local authorities in the European Netherlands over the decades.<sup>42</sup> Where possible, lighter supervision will be introduced which is closer to the supervision system used for municipalities. In the case of both the inter-administrative supervision in WolBES and the financial supervision in FinBES, account must be taken of the responsibility of the relevant authority, the democratic process that takes place there and trust in it. The accountability mechanisms and quality assurance within the public entities are the starting point here. In addition, supervision in a general sense (Article 132(4) of the Constitution) and financial supervision should be used with restraint. Supervision is conducted by a higher government body. At present, this is usually the Minister of BZK or the kingdom representative. Cft BES also plays a special role in financial supervision.

With regard to inter-administrative supervision in WolBES, contrary to the recommendation of the Advisory Division of the Council of State in its Advice, it is proposed not to include in this law any specific arrangements for tiered/differentiated supervision (e.g. for personnel decisions). As stated earlier, this proposal stems from the desire to continue operating on a basis of trust and the importance of respecting the freedom of the local administration. With the generic supervisory instruments, focused supervision can still take place where necessary. It should be added that the 'strictest' model described by the Advisory Division of the Council of State, namely intervention due to gross dereliction of duty, will continue to exist.<sup>43</sup>

Financial supervision will be brought more closely into line with the system for the European Netherlands. For financial supervision, in response to the Advice of the Advisory Division of the Council of State, the use of a tiered model is proposed. This is based on the fact that the Caribbean Netherlands is still in a transitional phase, and this implies greater involvement of the central government in the public entities. Although the emphasis is on positive cooperation and support, it is important for the necessary legal supervisory instruments to remain available so that effective interventions can take place if necessary. The tiered supervision model within FinBES means in brief that the level of supervision in particular areas will depend on the state of affairs at a public entity. This allows for a more tailored approach. It is also expected that, if the public entities can achieve a stronger position in the field of supervision by implementing the rules and arrangements arising from FinBES properly, this will serve as a positive stimulus for them. More emphasis will therefore be placed on system supervision. System supervision is a form of supervision in which the supervisory authority assesses the processes and control measures within an institution. If the system in a public entity is working properly, supervision may be more restrained in individual cases. This finds concrete expression in the supervision of asset disposals. In addition to the proposed light, moderate and stricter levels of supervision within FinBES, there is also the strictest level of inter-administrative supervision, as applied on Sint Eustatius in 2018. This can only be initiated in the event of gross dereliction of duty in a law specifically adopted for the situation. The situation concerned is not one where a single task is not being performed properly, but where the administration as a whole is seriously neglecting its duties. This is a highly exceptional and, of course, undesirable situation in which major interventions can be made in administrative relations. This is and remains a last resort. This strictest level will always be initiated in a specific law in a formal sense.<sup>44</sup> One of the aims of the tiered supervision model within FinBES is to prevent such a major intervention in local self-government.

#### *2.2.8.2 Supervision and implementation*

During the drafting of the proposed amendments, options were examined for making local supervision of the public entities more feasible, even with stricter supervision levels, and at the same time increasing the effectiveness of supervision. The idea here is to spare the public entities

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<sup>42</sup> For example: Van specifiek naar generiek. Doorlichting en beoordeling van interbestuurlijke toezichtarrangementen (From specific to generic. Examination and assessment of inter-administrative supervision arrangements) (report by the Van Oosting Committee), annex to Parliamentary Papers II 2007/08, 31 200 VII, no. 8; Parliamentary Papers 2009/10 32 389, no. 3

<sup>43</sup> Section 232 of WolBES and Art. 132 of the Constitution.

<sup>44</sup> Article 132(5), second sentence, in conjunction with 132a of the Constitution.

unnecessary administrative burdens. The fundamental principle is also that regulations should remain locally implementable and simple, for example with regard to reporting, given that the public entities have many tasks and a relatively small civil service. Inter-administrative supervision must be practicable locally in order to have added value. One element of this is that the changes implemented in the European Netherlands by the Generic Supervision (Revitalisation) Act (*Wet revitaliserend generiek toezicht*; hereinafter: *Wrgt*) will also apply to the public entities. Supervision is deployed on the basis of selectivity and proportionality, with the supervisory authority respecting the constitutional freedom of the public entities to regulate their own affairs.<sup>45</sup> This means that supervision only takes place where necessary, for example on the basis of risk assessments and the identification of possible abuses, and that the supervisory authority weighs up the need for supervision against its impact on the public entity's administrative and executive power. In order to limit the supervisory burden and continue to build on a basis of mutual trust, administrative consultations will always take place with the public entity prior to supervision. It is also important for a clear supervisory framework to be drawn up in advance, so that it is clear under what circumstances supervision can be expected and how it can be avoided.

Another important element here is the relationship between supervision and administrative agreements. It is important for these things to be properly coordinated. Among other things, new administrative agreements need to be checked to ensure that they do not interfere in an undesirable manner with current supervisory activities. Administrative agreements may not render any supervisory measures inoperative without the supervisory authority's explicit consent. At the same time, administrative agreements have a role to play in the way in which supervision is implemented in practice. Supervision can also play a role in assessing compliance with the administrative agreements, so it is important for the administrative agreements to be formulated so as to be verifiable. It is also important for clear agreements to be made with the public entities in advance, for example about the provision of information on the progress and realisation of the administrative agreements. This is also important for the supervision of administrative agreements.

#### *2.2.8.3 Positioning of supervision*

This raises the question of how supervision should be positioned within the Ministry of BZK.

Another relevant factor here is the separation of supervision and policy and, in this connection, the necessary coordination between policy and supervision. It must be possible to carry out supervision independently and objectively. This means that the supervisory authority must be able to perform its tasks without influence from, for example, the supervisee or the responsible administrator. Steps must be taken to prevent supervision activities from being hindered, for example at official level in the context of policy development. It should be noted, however, that the use of the administrative supervisory instruments of suspension and annulment also has a clear policy component, as an assessment is also conducted of whether the use of a supervisory instrument is proportionate.

It is therefore important for the supervisory organisational unit to be at arm's length from policy-making and for the supervisory framework and supervision letters to be established independently and at a high level within the organisation.

#### *2.2.8.4 Advisory board and the role of Cft BES*

Under the current *FinBES*, Cft BES plays an important role in the financial organisation of the public entities and its supervision. This role arose from the previous role played by the Board of Financial Supervision prior to the constitutional reform. Cft BES is currently regarded as an advisory board in some places, but this categorisation does not closely reflect the tasks and powers that Cft BES now has under *FinBES*.<sup>46</sup> With the revision of *FinBES*, the position of Cft BES

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<sup>45</sup> Article 124(1) of the Constitution.

<sup>46</sup> <https://organisaties.overheid.nl/Adviescolleges/>

has been reviewed in the context of broader central government policy with regard to the granting of independent status and governance of public interests.<sup>47</sup> It is proposed that Cft BES will play a less ambiguous role, namely as an advisory board.

The supervision of the public entities falls directly under the central government, as there is no provincial administrative layer. In some cases, this unusual situation requires a tailored approach. This is the case with the advice on the financial supervision performed by the Minister of BZK.

Supervision – and financial supervision in particular – by the Minister of BZK can have a major impact on the public entities. It is therefore desirable for a third party – in this case an advisory board – to be able to issue advice to the Minister on the supervision to be applied. As this advice may also express criticism of the Minister of BZK, it is important for this party to be at arm's length from the Ministry, in order to guarantee the independence of the advice. The Minister of BZK and the public entities also need an independent party from which the public entities can obtain advice on the budget and financial management. In that light, it is also desirable for the public entities to be represented on this independent advisory body. This cannot be brought about properly (if at all) under ministerial responsibility. An auditor can also provide independent advice, but not comprehensively, and in any case an auditor cannot provide advice on matters of public law. In addition, it is important that the advice is drawn up by an advisory board with expertise and knowledge of local circumstances and practices in the public entities. In view of these considerations, it is concluded that it is most appropriate for Cft BES to continue playing a role in financial supervision as an advisory board. In addition, Cft BES will advise the Minister of BZK on taking measures in the context of financial supervision and will advise the public entities more broadly on financial matters. As this does not involve advising the government on generally binding regulations or central government policy, the Advisory Boards Framework Act (Kaderwet adviescolleges) does not apply.

An advisory board conducts research, collects information, performs an analysis within its field of responsibility and against the background of the provisions established by and pursuant to the law and thus arrives at well-founded independent advice. The Minister of BZK involves the advice of Cft BES in the exercise of supervision. Because the legal provisions and standards for Cft BES are a given against which assessments are made, it is not possible for Cft BES itself to set standards or take decisions that have legal consequences for the public entities, whether or not under mandate. The setting of statutory or non-statutory standards and the taking of decisions are the responsibility of the supervisory authority, the Minister of BZK. Also relevant is the basic assumption that the power to regulate its own affairs is, in principle, vested in the public entity (local self-government). Intervention in this area should be undertaken very reluctantly and carefully and with proper democratic legitimacy. It is therefore appropriate that all decisions regarding inter-administrative financial supervision should be entrusted to the Minister of BZK. All of this means that there is less chance of lack of clarity with regard to the roles of the Minister of BZK and Cft BES. Furthermore, it is not considered appropriate for Cft BES to have executive tasks as an advisory board. These tasks will – insofar as they remain in place – be reassigned to the Minister of BZK.

An important task of Cft BES is to advise the Minister of BZK on financial management, the draft budget, draft budget amendments and the level of supervision of the public entities. In addition, Cft BES can (on request or on its own initiative) advise the Minister of BZK in appropriate cases on matters such as improvement plans, the supervision of asset disposals and the financial ordinance of the public entities. Cft BES also has a relevant role in advising on the establishment of administrative agreements, and in particular as to whether they are compliant, measurable and verifiable. Finally, Cft BES can advise on the budget, financial policy and financial management of the relevant public entity at the request of the executive council. In Chapter 4, the role of Cft BES

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<sup>47</sup> <https://www.kcbr.nl/themas/themas-z/governance/verzelfstandiging-en-governance-van-publieke-belangen-een-wegwijzer>



will be discussed in more detail and in Appendix 2 an overview is provided of the tasks of Cft BES under the current law and under the bill.

To enable Cft BES to perform its advisory task properly, a provision is included in the bill that various documents of the public entity must be sent to the Minister of BZK through Cft BES. Based on its broad power to give unsolicited advice to the Minister of BZK, Cft BES can add advice to these documents. The Minister of BZK must then take a position on this advice within six weeks. Briefly, the documents this concerns are as follows:

- Rules of the public entity on the disposal of property;
- Information about property disposals made;
- Financial statements of related parties;
- Decisions to amend the budget;
- Copies of administrative reports;
- The adopted annual accounts and the annual report or any annual accounts not adopted or not properly adopted by the island council;
- Decisions to incur obligations in urgent situations before the relevant budget or budget amendment has been adopted;
- The audit opinion and report on findings;
- Decisions of the island administration designated by the Minister of BZK as having financial consequences (in the case of stricter budgetary supervision);
- The improvement plan in the case of moderate supervision of financial management;
- Reporting on progress with the improvement plan.

For the performance of its tasks, it may be necessary for Cft BES to obtain other information from the public entity. As is the case under the current FinBES, the public entity is obliged to provide the necessary information to Cft BES. Cft BES or its representatives must also be granted access to/inspection of assets, records, documents and other information carriers. Given the principle of mutual trust and the aim of minimising administrative burdens, it is obvious that these powers will be used with restraint. The supervisory framework will explain in more detail how this should work in practice and under what circumstances additional information clearly needs to be obtained. It will be clarified in the FinBES itself that the right of access and inspection only applies insofar as Cft BES deems this necessary for the performance of its duties.

#### *2.2.9 Transparency*

Matters such as a tailored approach, a uniform approach on the part of the various ministries and the application of the 'comply or explain' principle require transparency from the central government. This is relevant, among other things, when it comes to differentiation of supervision. Criteria must be clear and applicable to each of the public entities. It must also be clear to the public entities how certain standards are interpreted, so that they can focus on achieving those standards and be given equal opportunities. In the context of 'comply or explain', transparency is required when it is decided not to involve the public entities in legislative amendments, policy intensifications or subsidy schemes, or when a decision is taken, despite a request for a derogation from the public entities, to include the Caribbean Netherlands in initiatives for the European Netherlands.

### **3. The Public Entities Bonaire, Sint Eustatius and Saba Act**

This paragraph discusses the proposed amendments to WoIBES, in particular the discontinuation of the position of kingdom representative, inter-administrative supervision and the increase in the number of island council members and executive council members.

### 3.1 The position of kingdom representative

#### 3.1.1 Introduction and background

The position of kingdom representative was created in the constitutional reform of Bonaire, Sint Eustatius and Saba, partly because of the lack of the province as an administrative layer. Under WolBES, the kingdom representative has specific tasks and powers (Section 204 of WolBES), which mainly focus on ensuring good governance and serving as the central government's 'eyes and ears' on the spot. This also includes various supervisory tasks, such as granting approval for certain ordinances and personnel decisions. In addition, the kingdom representative has tasks and powers based on various other laws, in particular with regard to the Security (BES) Act (Veiligheidswet BES; hereinafter: VwBES). On this area, see 'Relationship with national legislation' (Paragraph 6.2).

Since 2010, advancing insight has shown that a different classification of roles and positions would benefit inter-administrative relations. In practice, there has turned out to be a lack of clarity and dissatisfaction with regard to the kingdom representative's position, which has ultimately led to the proposal to assign the tasks of the kingdom representative differently.

The hybrid nature of the kingdom representative's position has made it particularly challenging: it has both supervisory and coordinating tasks. The kingdom representative is also seen as the appropriate person to represent the interests of the public entities, although this role is not formally enshrined in WolBES.<sup>48</sup> Although such a combination of roles is not uncommon, in the case of the kingdom representative it has in practice had a negative effect on cooperation between administrative levels, partly because of a lack of balance in the performance of the roles – at least from the point of view of the public entities.<sup>49</sup> This point is emphasised in two reports from 2013 and 2014 on central government coordination of the Caribbean Netherlands.<sup>50</sup> In the analysis of the Small Evaluation Committee (Commissie Kleine Evaluatie) from 2014, it is noted, among other things, that the kingdom representative 'has clear tasks set out in WolBES with regard to the supervision of the local administration, but not with regard to its other (supposed) tasks as a provider of liaison and coordinator'.<sup>51</sup> It was therefore possible for the kingdom representative to feel a closer emotional bond with the central government than with the public entities. The choice of name for the position also contributed to this.<sup>52</sup> The Council of State pointed this out in 2012 and recommended changing the name to 'Caribbean Commissioner' (Caribisch Commissaris), for example.<sup>53</sup>

Another factor is that expectations on the two sides in relation to the constitutional reform differed. This was also noticed by the Council of State in 2012 and was emphasised again in 2013 in an investigation of the functioning of the coordination of central government administration in the Caribbean Netherlands by the Inspection, Risk Analysis and Advisory Unit (Inspectie Signalering Begeleiding).<sup>54</sup> The public entities were expecting local living conditions to improve to the level of the European Netherlands, whereas the central government focused largely on legislation, supervision and enforcement in the period after 10/10/10 alongside its work on education, care and infrastructure.<sup>55</sup> This was not particularly because of the position of the kingdom representative, but it did contribute to an imbalance in the performance of tasks by the kingdom representative and thus to the way in which the position was viewed from the islands. In addition, the kingdom representative is partly dependent on third parties to perform its tasks in

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<sup>48</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67; Parliamentary Papers II 2013/14 33 750, no. 35

<sup>49</sup> Parliamentary Papers II 2013/14 33 750, no. 35, annex 308762

<sup>50</sup> Parliamentary Papers II 2013/14 33 750, no. 35

<sup>51</sup> Parliamentary Papers II 2013/14 33 750, no. 35, annex 308762, p11

<sup>52</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67

<sup>53</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67

<sup>54</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67; Parliamentary Papers II 2013/14 33 750, no. 35, annex 308763

<sup>55</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67; Parliamentary Papers II 2013/14 33 750, no. 35, annex 308763

the area of coordination properly.<sup>56</sup> A lack of the right formal tools to perform this role properly has made fulfilling it even harder. Moreover, the fact that the kingdom representative has been stationed on Bonaire since 10/10/10 has not been good for the bond with the Windward Islands. The kingdom representative has been associated by the Windward Islands with remote Bonaire from the outset.<sup>57</sup>

The combination of the above factors has negatively affected cooperation between the various administrative levels and led to criticism of the position of kingdom representative.<sup>58</sup> Efforts to improve relations between the administrative levels in recent years have not led to any improvement and significant criticisms have remained, for example regarding the location, job description and interpretation of the role of the kingdom representative and the disproportionate emphasis on supervision. The Advisory Division of the Council of State again concluded in its Advice of 2019 that the kingdom representative is perceived too much as an 'official who represents the interests of the European Netherlands'.<sup>59</sup>

The Advisory Division of the Council of State in any case proposes in its Advice that inter-administrative supervision should be organised differently, which would remove the need for the position of kingdom representative.<sup>60</sup> In view of the above points, it is proposed that the position of kingdom representative be discontinued.

### *3.1.2 Reassigning the tasks of the kingdom representative*

The supervisory tasks that currently belong to the kingdom representative under WolBES will be assigned to the Minister of BZK. The island governor will be assigned tasks that primarily relate to reporting to the Minister of BZK, promoting cooperation and promoting good governance. Some tasks will also be discontinued. These changes are largely consistent with the Advice of the Advisory Division of the Council of State. This division of tasks has been chosen because the supervisory tasks that are currently assigned to the kingdom representative belong to the province or the king's commissioner under the Municipalities Act (for example the possibility for the island governor to ask the kingdom representative for an exemption from the obligation to have his residence in the public entity, Section 85(2) of WolBES). It therefore makes sense to assign such supervisory tasks to a higher administrative level in the case of the public entities too. If the kingdom representative's position is discontinued, this supervision can only be entrusted to the central government.

Contrary to what is suggested by the Advisory Division of the Council of State in its Advice, it has been decided not to grant the island governor the authority to approve island ordinances. This would be inappropriate from a constitutional point of view: entrusting the approval of island ordinances to the island governor would give the latter a right of veto vis-à-vis the representative body. The primacy of the island council (established in Article 125, in conjunction with 132a(2) of the Constitution) prevents this. For more information on the approval of island ordinances, see Paragraph 3.2.3.

However, the other points from the Advice of the Advisory Division of the Council of State with regard to the reassignment of tasks of the kingdom representative to the island governor have been adopted. These concern the power to submit decisions to the Minister of BZK for annulment (this power already lay with the island governor and will lie exclusively with the island governor if the position of kingdom representative ceases to exist) and the task of supervising proper and careful administration.

The granting of exemptions for island council members or the island governor is also assigned to the Minister of BZK. The exemptions in question are for certain prohibited actions (Section 16(2) of

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<sup>56</sup> Parliamentary Papers II 2013/14 33 750, no. 35, annex 308762

<sup>57</sup> Parliamentary Papers II 2013/14 33 750, no. 35, annex 308763

<sup>58</sup> Parliamentary Papers II 2012/13 33.400-VII, no. 67; Parliamentary Papers II 2013/14 33 750, no. 35

<sup>59</sup> Annex to Parliamentary Papers II 2019/20, 35 300, IV, no. 11, p34

<sup>60</sup> Annex to Parliamentary Papers II 2019/20, 35 300, IV, no. 11, 35

WolBES) and the obligation for the island governor to have his residence in the public entity (Section 85 of WolBES).

Tasks and powers can also be found in other legislation besides WolBES. These, too, will be cancelled or reassigned in this bill, with the exception of tasks and powers that are included in Kingdom Acts. The amendments to these will be included in a separate national legislation process. The kingdom representative is also mentioned in the General Pension and Benefits (Political Office Holders) Act (Algemene pensioen- en uitkeringswet politieke ambtsdragers). Pursuant to Article 63 of the Constitution, a special procedure also applies to this law, and its amendment will therefore be included in a separate process.

Appendix 1 to this explanatory memorandum contains an overview of the duties of the kingdom representative in various pieces of legislation that will be reassigned to another body and an explanation of the choice.

### *3.1.3 Appointment of island governor (or acting island governor)*

At present, the authority to make recommendations on the appointment/reappointment of the island governor lies with the kingdom representative. This role is now being discontinued. It is proposed instead to give the island council the right of recommendation. The municipal council and provincial councils have such a right with regard to the mayor and the king's commissioner respectively.<sup>61</sup> The Minister of BZK may only opt not to follow the recommendation on compelling grounds.

In WolBES, a deliberate decision was made at the time to organise the appointment/reappointment of the island governor along the lines of the system used in the European Netherlands until 2001 (namely purely as a Crown appointment). The reasons for this were the small-scale nature of the administration, the vulnerability in the field of administrative integrity and the importance of the island governor actually standing above the parties.<sup>62</sup> This is no longer seen as necessary, and it is regarded as desirable to bring the system closer to the European Dutch system.

It is also proposed that the rules regarding the acting island governor should be aligned more closely with the system used by municipalities and provinces.<sup>63</sup> This means that if the island governor is prevented from or incapable of acting as such, he will in principle be deputised for in his office by an island commissioner to be designated by the executive council, and the chair of the island council will be deputised for by the longest sitting member of the council. In addition, the Minister of BZK may arrange the deputisation, if he deems it necessary in the interest of the public entity. The views of the island council will be sought in this context unless there are compelling reasons not to do so. At present, WolBES stipulates that the acting island governor is always designated by the kingdom representative. Bringing these rules into line with the European Dutch system will increase the autonomy of the public entity.

### *3.1.4 Limited increase in duties of the island governor*

In addition, the Advisory Division of the Council of State indicated in its Advice that the authority to take personnel decisions should be assigned to the island governor. This suggestion has not been adopted. In the Municipalities Act, this authority lies with the municipal executive. There are no compelling reasons not to use the same approach as the Municipalities Act on this point.

Given the challenging position in which the island governor finds himself, it is not advisable to add to his set of duties and powers too much. This will in any case happen to some extent when the position of kingdom representative ceases to exist. This makes it all the more important to strengthen the support given to the island governor. This can be done by making support possible for the island governor's cabinet in consultation with and at the request of the public entities and

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<sup>61</sup> Sections 61 and 61a of the Municipalities Act and Sections 61 and 61b of the Provinces Act.

<sup>62</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p. 38

<sup>63</sup> Sections 77 and 78 of the Municipalities Act and Sections 75 and 76 of the Provinces Act.

by providing funds to invest in, for example, a sounding board (see also Paragraph 3.1.6) for the island governor (see further Paragraph 3.1.3). The closer examination of the requirements of the appointment process and the profile of the island governor also plays a role in this.

#### *3.1.5 Appointment of island secretary*

The Advisory Division of the Council of State stated in its Advice that the island secretary should be appointed by royal decree in order to strengthen his position. However, it is considered more desirable to leave this authority with the public entity in order to respect the principle of local self-government. This authority will remain with the executive council.

#### *3.1.6 Promotion of interests*

With a view to strengthening inter-administrative relations, it is especially important to pay more attention to the promotion of interests. In the past work has been done with Ministry of BZK liaisons on Bonaire and the Kingdom Representative's Office has also played a role in promoting interests. In view of the finding that the position of kingdom representative was not working optimally within inter-administrative relations and the criticism of the lack of visibility/representation on the Windward Islands, it is desirable to promote interests in a different way. In order to give the public entities the opportunity to implement this role in whatever way they regard as optimal, a budget will be made available to the public entities for the purpose of promotion of interests. For example, a local office for administrative relations can be set up or reinforced, expertise can be hired to strengthen administrative relations, or the budget can be used to strengthen contacts from The Hague.

### *3.2 Inter-administrative supervision*

#### *3.2.1 Introduction*

Two important goals of inter-administrative supervision are to contribute to the proper performance and exercise of statutory tasks and powers by the public entities and, at least as far as the supervision of joint governance is concerned, to ensure unity of administration. The system of supervision will be reviewed in several respects.

In line with the Municipalities Act, generic supervision will also be reviewed. There are also a number of general proposals with regard to supervision, which are explained in more detail in this paragraph.

#### *3.2.2 Revitalisation of inter-administrative supervision of joint governance tasks*

Generic supervisory instruments are included in WolBES, namely the possibility of substitution in the event of dereliction of duty and the possibility of suspending and annulling island decisions. These instruments are important for the supervision of the joint governance tasks of the public entities (i.e. the failure to perform tasks on time or properly pursuant to laws other than WolBES and FinBES). Suspension and annulment may also take place in the context of WolBES and FinBES.

The provisions in WolBES regarding generic supervision will be adjusted in line with the European Netherlands on the basis of Wrgt. This will bring the system more closely into line with the European Dutch system. Wrgt was not initially implemented in the Caribbean Netherlands, because of the legislative restraint that was being applied at the time. In the European Netherlands, specific supervisory powers were restructured as part of the modernisation of inter-administrative supervision in Wrgt. Briefly, the aim was to simplify inter-administrative supervision in order to make the system more efficient, effective and transparent.<sup>64</sup> Such a simplification is now also proposed for the Caribbean Netherlands.

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<sup>64</sup> 'Tussenmeting herziene stelsel van Interbestuurlijk toezicht' ('Interim measurement of the revised system of inter-administrative supervision', report of 5 February 2015 commissioned by the Ministry of the Interior), Twynstra Gudde 2015.

In line with Wrgt, a specific supervisory power may continue to exist if the generic set of instruments is inadequate and functional administration, or administration that focuses on a specific subject, needs to be incorporated into general policy. In addition, a supervisory power may be necessary if a higher administrative level has its own statutory operational responsibility, but is completely dependent on a local organisation for implementation, i.e. in the case of intertwined implementation.<sup>65</sup>

A number of inter-administrative supervisory regimes for the public entities are included in specific laws. These will also be amended in this bill.

### *3.2.3 Supervision of island ordinances*

In the current situation, approval from the kingdom representative is required for a number of specific island ordinances. These are ordinances in the area of financial support (party allowances), the groups represented on the island council and the right to official assistance for individual members, as well as the ordinance of the island council concerning official positions which, due to the powers and responsibilities they entail, are still regarded as compatible with membership of the island council. The island ordinance instituting the court of auditors must also be approved by the kingdom representative. At the time, it was decided to introduce a supervisory provision on the grounds that the power of the island council concerned was a vulnerable one. Island ordinances should therefore be approved by the kingdom representative in the interest of the island council itself.<sup>66</sup>

This form of approval is not required for municipalities. From a 'comply or explain' perspective it makes no sense to retain such a right of approval for the public entities, as there is no special form of prior supervision even for very small municipalities in the European Netherlands, where the vulnerability of this power also plays a role. The supervision of island ordinances with regard to compensation and benefits at the expense of the public entity, other than in the form of reimbursements and allowances, does have a counterpart in the Municipalities Act, however. For municipalities, such ordinances require the approval of the provincial executive. The submission of ordinances with regard to compensation and benefits also has a counterpart in the Municipalities Act. If an ordinance is contrary to the law or the public interest, intervention can still be performed after its adoption by means of the generic supervisory instrument of suspension and annulment.

It is therefore proposed to bring the supervision of island ordinances into line with the supervision as regulated in the Municipal Act, whereby:

- The approval of island ordinances with regard to official assistance, benefits and the court of auditors will be discontinued;
- The approval of ordinances with regard to compensation and benefits at the expense of the public entity, other than in the form of reimbursements and allowances, will be entrusted to the Minister of BZK;
- Island ordinances regarding compensation and benefits (Sections 120, 121 and 122 of WolBES) will be submitted to the Minister of BZK.<sup>67</sup>

In other cases, retrospective action may be taken in the event of a conflict with the law or the public interest, by means of suspension and annulment. As indicated in Paragraph 3.1.2, it has also been decided not to grant the authority to approve island ordinances to the island governor, as this would impede the primacy of the island council in this respect. There is no reason to introduce a system of tiered supervision here.

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<sup>65</sup> Van specifiek naar generiek. Doorlichting en beoordeling van interbestuurlijke toezichtarrangementen (From specific to generic. Examination and assessment of inter-administrative supervision arrangements) (report by the Van Oosting Committee), annex to Parliamentary Papers II 2007/08, 31 200 VII, no. 8.

<sup>66</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p.55

<sup>67</sup> This submission obligation also applies to island ordinances with regard to financial management, the structure of financial organisation, and the control of financial management and of the structure of financial organisation (Sections 34 and 38 of FinBES).

### 3.2.4 Supervision of personnel decisions

The power to take personnel decisions – with the exception of decisions regarding the appointment, promotion, suspension and dismissal of the registrar and registry officials – lies with the executive councils of the public entities. The executive councils also determine the rules on administrative organisation and the regulations concerning the legal status of officials of the public entity. The power to take personnel decisions with regard to the registrar and registry officials lies with the island council. At present, all decisions regarding personnel decisions – including the island secretary, registrar and registry officials – and contracts involving working for the public entity for more than one month and for more than 16 hours per week on average, must be submitted to the kingdom representative for approval. The personnel decisions only acquire legal force when they have been approved by the kingdom representative. This provision was introduced to ensure good governance and was based on the observation that the policy regarding the appointment and promotion of public officials is a vulnerable factor, which may not be based on the quality of the person in question, but on other factors such as loyalty or family relationship.<sup>68</sup>

Based on the principles of promoting mutual trust, strengthening the freedom of the public entities and bringing them more closely into line with the legal system in the European Netherlands, it is proposed to scrap the supervision of personnel decisions.

### 3.2.5. Information collection powers

The emphasis will be on trust in the functioning of the local administration. With the introduction of dualism, a basis has already been laid for better possibilities of democratic control within the public entities, among other things through the active and passive information provision duty incumbent on the island council. The focus on strengthening executive councils, island councils and island governors will further reinforce the public entities in the future and create the room to bring the supervision of the island administrations into line with the supervision of municipal authorities.

However, it remains necessary for administrative supervision that sufficient information is available or that it can be collected if necessary. **Information-gathering is an inseparable part of supervision. The provision of information to the supervisory authority will take place more retrospectively with the new supervisory model than in the current system, on the basis of mutual trust.** With the revitalisation of generic supervision, the legal framework for information collection at European Dutch local authorities has also been updated. This is also proposed for the Caribbean Netherlands.

There is a distinction between information provided systematically and in response to incidental requests. Systematic information provision concerns supervisory information that is requested from more than one public entity or requested more than once.<sup>69</sup> A specific legal basis is needed for this. Examples include submitting the annual accounts to the supervisory authority and periodically submitting an overview of personnel decisions. Administrative consultations will need to take place concerning the requesting of systematic information, and the proportionality of the information request will need to be considered in relation to the administrative burden for the public entity.

No specific legal basis is required for one-off information requests, for example in the context of a thematic investigation or an investigation into a specific incident.<sup>70</sup> Such a request may be made, for example, if there is a suspicion of wrongdoing at the public entity. In the context of inter-administrative supervision in the European Netherlands, the supervisory authority may also designate officials to collect information themselves in the context of the supervision of joint

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<sup>68</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p. 54.

<sup>69</sup> See the definition as used in Section 1, under d, of the Decree on the Provision of Systematic Supervisory Information (Besluit verstrekking systematische toezichtinformatie).

<sup>70</sup> This is generally regulated in Section 213 of WolBES, insofar as it concerns information that is not already public.

governance.<sup>71</sup> These officials have various supervisory powers. The provision is not confined to a situation in which dereliction of duty has already been established. This possibility is also considered desirable for the Caribbean Netherlands, partly to prevent problems arising in the provision of information required for inter-administrative supervision due to the lack of a local supervisory authority (as a result of the abolition of the kingdom representative). Unlike the kingdom representative, these supervisory officials only have powers to collect information. Decision-making continues to be assigned to the responsible minister. It is also proposed to make it possible to send supervisory officials in connection with the supervision of parts of WoIBES and FinBES. This will improve the feasibility of supervision and can be of great added value, for example in the supervision of financial management.

The deployment of such a supervisory official will be temporary and aimed at improving the situation.

### *3.2.6 Intermediary role of the Minister of BZK*

The Minister of BZK will be given the opportunity to attend all meetings of the island government and to inspect all documents available to the island government, including confidential documents, insofar as this is necessary for advising and acting as an intermediary in the event of any disruption to administrative relations at a public entity or when the administrative integrity of a public entity is under threat. This power has also been introduced for the European Netherlands in the Local Administration (Promotion of Integrity and Functioning) Act (*Wet bevorderen integriteit en functioneren decentraal bestuur*). In the European Netherlands, this power lies with the king's commissioner, and is therefore assigned to the Minister of BZK in WoIBES.

### *3.3 Increasing the number of island council members and island commissioners (eilandgedeputeerden)*

Compared to the European Netherlands, where the number of municipal council members is based on the number of inhabitants, with a minimum of nine, the constitutional reform established a relatively low number of island council members for the public entities. It was considered that expanding the number of island council members (to a number based on the municipal graduated scale) would lead to a substantial increase in the number of island council members, and that this would cause problems in view of the small size of the population.<sup>72</sup> In the meantime, advancing insight has shown that the low number of island council members leads to a high workload for the current members, each of whom has to manage an extensive brief<sup>73</sup>. In addition, the island council basically already has a greater range of tasks than municipalities in the European Netherlands, because the public entities are islands and border on other countries. Moreover, the number of island council members is not growing with the number of inhabitants. An increase in the number of seats will broaden and differentiate the political input from the population and generally strengthen administrative power. The current number of island commissioners is similarly inadequate for the broad range of tasks.

The island council of the island territory of Bonaire currently has nine members, while those of the island territories of Sint Eustatius and Saba each have five members. With the constitutional change on 10/10/10, it was decided not to adopt the municipal graduated scale and in principle to keep the number of island council members constant. At the time, the idea was that adopting the graduated scale from the Municipalities Act might cause problems in practice due to the sharp increase in the number of council members and the small population of the islands.<sup>74</sup>

Section 8 of the Municipalities Act states that the number of council members in a municipality depends on the number of inhabitants. This does not increase proportionally, but according to a

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<sup>71</sup> Section 124e of the Municipalities Act and Section 121c of the Provinces Act.

<sup>72</sup> Parliamentary Papers II 2008/09, 31 954, no. 3, p.20

<sup>73</sup> Vijf jaar Caribisch Nederland – Werking van de nieuwe bestuurlijke structuur ('Five years of the Caribbean Netherlands – The operation of the new administrative structure'). DSP-groep, 23 September 2015

<sup>74</sup> Parliamentary Papers II 2008/09, 31 954, no. 3



fixed distribution. The minimum number of council members is nine for municipalities with less than 3,001 inhabitants; the maximum number of council members is 45 for municipalities with more than 200,000 inhabitants. This minimum and maximum are thus determined by law. The number of council seats is always odd, to prevent tied votes when all members are present.

The Municipalities Act also regulates the number of aldermen that a municipality with a particular number of inhabitants may have (Section 38). For all municipal classes, the minimum number of aldermen is two. The maximum number of aldermen depends on the number of council members: *20% of the number of council members, with a minimum of two aldermen.*

In view of the relatively large range of duties of the public entities and the high workload for the administration, it makes sense for the public entities to use at least the graduated scale that is applied in municipalities. Discussions with the public entities have also revealed a strong desire to increase the number of island council members in accordance with the municipal graduated scale. The application of this scale to calculate the number of members of an island council would mean that Bonaire would have 19, Sint Eustatius 11 and Saba 9 island council members based on the population of 2022. The public entities have also expressed the wish to increase the number of island commissioners, stating that this number should be higher than the number based on the municipal graduated scale. This is because the range of duties on the public entities is so great compared to municipalities of comparable size that the small number of island commissioners based on the municipal graduated scale would be insufficient to manage it (for Saba and Sint Eustatius, for example, the number of island commissioners would not increase, remaining at two). It is therefore proposed that the number of island commissioners should be 25% of the number of island council members, with a minimum of three island commissioners. The maximum number will be rounded to the nearest number. This would bring the number of island commissioners for Bonaire, Sint Eustatius and Saba to 5, 3 and 3 respectively.

In terms of practical and logistical feasibility, it is not thought desirable to work towards a higher number of island council members and island commissioners for the public entity of Bonaire in one step. For Bonaire it is proposed to work towards the increase in two phases and to implement it prior to the elections in 2027 and 2031. For Sint Eustatius and Saba, however, it is proposed to implement this increase in one step in 2027, as this increase is of a smaller size and the practical consequences can therefore be dealt with properly. For Bonaire, adopting the municipal scale for island council members will mean an extra island commissioner in 2031. Depending on the population growth in the public entities, the numbers as of 1 January 2031 may be different. In any case, the graduated scale of Sections 9 and 38 of the Municipalities Act will be followed. The increases are shown in the following table:

	Now	As of 1 January 2027	As of 1 January 2031
Island council members			
Bonaire	9	15	19
Sint Eustatius	5	11	11
Saba	5	9	9
Island commissioners			
Bonaire	3	4	5
Sint Eustatius	2	3	3
Saba	2	3	3

In preparation for these increases, the Ministry of BZK will provide support with efforts to ensure broader participation from the population (especially younger people) and training for current and future politicians.

### *3.4. The court of auditors*

#### *3.4.1 Discontinuation of the requirement to have a joint court of auditors*

The current legislation for the Caribbean Netherlands is based on the mandatory establishment of a joint court of auditors (gezamenlijke rekenkamer; Section 95 of WoIBES). It is stated that each of the island councils appoints one member for a period of six years. This joint court of auditors investigates the efficiency, effectiveness and legality of the policy pursued by the island administration.

However, a joint court of auditors has never become operational. Physical distance and cultural and language differences were factors that made cooperation difficult. After consultation between the General Court of Auditors and the public entities, it was decided in practice to have an independent court of auditors for each island, thereby anticipating the amendment of Section 95 of WoIBES.<sup>75</sup>

The formation of an independent court of auditors has been laid down by Bonaire in the Court of Auditors (Public Entity of Bonaire) Regulation (2021) (Verordening Rekenkamer Openbaar Lichaam Bonaire). The Bonaire Administrative Agreement (2018-2022) states that the formation of a court of auditors will be further explored. The Saba Package 2.0 (2022-2025) includes the implementation of a separate court of auditors for Saba. A court of auditors was set up on Sint Eustatius in 2020, with support from the court of auditors of the municipality of Rotterdam, as a result of the Restoration of Arrangements (Sint Eustatius) Act (Wet herstel voorzieningen Sint Eustatius).<sup>76</sup>

Freedom of choice is left in the bill as to whether each public entity should have its own court of auditors or a joint court of auditors with the other public entities. The inclusion of these optional provisions will leave more room for flexibility, a tailored approach and freedom of choice in the future than is currently the case. This is very much in line with the expressed needs of the public entities. It also closely reflects what is already customary for municipalities and provinces in the European Netherlands. Of course, if a public entity has its own court of auditors, it may still seek cooperation with other courts of auditors.

If it is decided to set up a joint court of auditors, this will have to be arranged through the Common Regulations Act (Wet gemeenschappelijke regelingen; hereinafter: Wgr). Among other things, agreements will have to be made about the composition of the administration, accountability to the island councils and the public nature of the meetings.

#### *3.4.2 Local Courts of Auditors Reinforcement Act*

With effect from 1 January 2023, the Local Courts of Auditors Reinforcement Act (Wet versterking decentrale rekenkamers) has amended a number of provisions in the Municipalities Act and Provinces Act with regard to the local courts of auditors in the European Netherlands. This law makes separate or joint independent courts of auditors mandatory in all municipalities and provinces. The law also provides for a reinforcement of the position of the independent court of auditors by expanding its investigative powers. In terms of the 'comply or explain' principle, the amendments to WoIBES and FinBES are consistent with this provision, except for one legal

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<sup>75</sup> Report on a written consultation on the report of the Court of Auditors on 'Bijzondere uitkeringen aan Caribisch Nederland' ('Special purpose grants to the Caribbean Netherlands') (Parliamentary Papers II 2020/21, 35570VII, no. 103).

<sup>76</sup> Detailed description of criteria of September letter concerning Sint Eustatius 2019 (Parliamentary Papers II 2019/20, 35 300 IV, no. 36).

technical point relating to the investigation of the provision of guarantees and loans, which does not apply to the public entities.

#### **4. The Public Entities Bonaire, Sint Eustatius and Saba Finances Act**

##### 4.1 Introduction

The current FinBES contains rules on the financial function of the public entities. These rules relate to the budget, budget amendments, annual accounts and financial management. FinBES also contains rules on financial supervision, the role of Cft BES, the authority of the public entities to raise taxes and their financial relationship with the central government. Finally, FinBES contains rules on the public entities' integrated asset management and rules severely limiting the possibilities for borrowing by the public entities.

The present revision of FinBES is confined to the financial function and financial supervision. These elements have a direct relationship with WolBES. The revision of FinBES is therefore confined to Chapters I to III of FinBES. These chapters also include the provisions on integrated asset management and the prohibition on borrowing. However, these subjects are excluded from the current revision (see Paragraph 1.1).

The current Chapters I-III of FinBES on the financial function and financial supervision are based first on the Municipalities Act and second on the BES Temporary Financial Supervision Decree (Besluit tijdelijk financieel toezicht BES) which applied before 10/10/10.<sup>77</sup> Particularly because the provisions of this Decree have been integrated into FinBES, FinBES describes more forms of financial supervision, stricter supervision and less differentiated supervision than the Municipalities Act. Cft BES is also based on this decree, as is the integrated asset management system and the generic prohibition on borrowing, apart from the possibility of interest-free loans from the central government. The BES Temporary Financial Supervision Decree does not have a counterpart in the European Netherlands. As a result, many of the provisions of FinBES have no counterpart in European Dutch legislation.

The principles for the reconsideration of Chapters I-III of FinBES are set out in Paragraph 4.2. These principles are firstly applied to the revision of the provisions on the finance function (Paragraph 4.3) and the head of finance (hoofd financiën) (Paragraph 4.4) and then (Paragraphs 4.5 – 4.7) to the various forms of financial supervision, namely:

- Budgetary supervision and supervision of financial management;
- Supervision of private legal entities with an association with the public entity, and
- Supervision of disposals of property.

##### 4.2 Principles

The proposal to amend FinBES is, as with WolBES, made with the envisioned situation in mind. The principles discussed in Paragraph 2.2 are also the principles for the revision of FinBES. Local freedom of policy-making and trust are paramount, as is a separate financial supervision approach to each public entity, to make tailored oversight possible. The following is also stated specifically for the revision of FinBES.

In the current FinBES, the standard form of supervision is strict. If the public entities comply with the applicable obligations, this will not lead to less supervision. If the public entities do not comply with the applicable obligations, it is difficult to increase supervision, as it is already present to a

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<sup>77</sup> In the European Netherlands, in addition to the Municipalities Act, the Grants to Municipal Authorities Act and the Local Authorities Financing Act (Wet financiering decentrale overheden) are also relevant for the financial policy and management of provinces and municipalities. Chapter V of FinBES is based on the Grants to Municipal Authorities Act. However, this chapter is not revised in the present bill. The Local Authorities Financing Act regulates the preconditions for borrowing and investments by the local authorities in the European Netherlands. The provisions on borrowing in FinBES are not based on this act. The provisions on borrowing are also not revised in this bill.

great extent. Making supervision more focused can increase its effectiveness. This bill therefore contains a proposal for tiered financial supervision; it is proposed to introduce a light, moderate and strict supervisory level for both budgetary and financial management supervision. Supervision can be kept simple and light by making it possible to adjust supervision according to the extent to which the public entities have their financial management and budgets in order. If a problem develops with financial management and/or the balance in the budget, supervision can be scaled up to moderate or strict.

To be differentiated, supervision needs to be transparent. It is proposed to include criteria in FinBES for the supervisory level that applies to each of the public entities. As the supervisory authority, the Minister of BZK will determine the appropriate supervisory level. This proposal is comparable to the way in which the supervisory authority of the municipality annually determines whether or not a municipality is placed under preventive (stricter) supervision. It is therefore important for the supervisory authority to let the public entities know in advance how it interprets the standards by which it conducts its assessment. A public entity can then focus on ensuring that these standards are met.

Less financial supervision by central government is only possible if the public entities' financial management and financial policy-making are adequate. Given the limited number of officials, for example for finance, it is necessary to ensure expertise, segregation of duties and sufficient support. This will mean that less supervision is sufficient.

#### 4.3 The financial function

The right to set a budget is an important democratic right. By adopting a budget, the island councils decide what the budgeted resources may be spent on. The executive council implements the plans within the budget and then accounts for them. It is up to the island council to monitor the implementation of the budget during the year and at the end of the year with the annual accounts.

The current FinBES has a number of provisions on the budget cycle. For example, FinBES sets the requirements the budget must meet and states when the island council must have adopted the budget. The FinBES provisions on the public entities' budget cycle largely follow the provisions of the Municipalities Act. However, there are a number of derogations from the Municipalities Act in the current FinBES, in various provisions on the budget cycle, the accounting system, support for the public entities with accounting issues and the appointment of the head of finance. These derogations have been reconsidered on the basis of the principles stated in Paragraph 2.2.

##### *4.3.1 Budget cycle*

The first respect in which the current FinBES deviates from the Municipalities Act is that it stipulates that the draft budget will be presented to the island council on 1 September at the latest (Section 17(4)). The budget must then be adopted by the island council and sent by the executive council to the Minister of BZK by 15 November. This is the budget for the following year. The Municipalities Act also stipulates that the budget must be adopted and sent off by 15 November. However, the date of 1 September for the presentation of the draft budget is not prescribed for municipalities. Municipalities decide for themselves when to present the draft budget to the municipal council. Certain preconditions do apply, such as that the draft budget must have been available for inspection for two weeks; these provisions are also included in the current FinBES. The disadvantage of the early 1 September deadline is that the budget is less up to date. An up-to-date budget is better for the administrative scrutiny of the island council.

In this proposed revision of FinBES, the 1 September deadline for submitting the budget is therefore repealed. However, if stricter supervision is in place, the Minister of BZK can set a deadline for sending the draft budget to Cft BES (see Paragraph 4.5.3). Cft BES will advise the Minister of BZK on the appropriate level of budgetary supervision.

In addition, the current FinBES, in derogation from the Municipal Act, stipulates that the supervisory authority adopts the budget if the island council fails to do so in time. This is no longer

regarded as desirable, as the adoption of the budget by the Minister of BZK means extensive interference in local self-government. In addition, this supervisory instrument is not regarded as effective by the supervisory authority. If a municipality is late in adopting the budget, this may be a reason for the supervisory authority to place the municipality under preventive supervision. Preventive supervision means that prior permission must be obtained from the supervisory authority before any spending takes place, until there is a budget that has been adopted by the municipal council and approved by the supervisory authority. Subsequently, budget amendments must also be approved by the supervisory authority.

Introducing supervision is also a more appropriate consequence for the public entities when deadlines are missed, as it does not violate the island council's democratic right to adopt the budget. It means that spending cannot lawfully take place without the supervisory authority's approval if there is no adopted budget.

The proposal is therefore that the island council should adopt the budget, even if it is late in doing so. If the budget is adopted late or is not adopted, this may be a reason to tighten up financial supervision (see Paragraph 4.5.3 on budget supervision).

The third derogation concerns the implementation reports. The current FinBES states that there should be an implementation report every quarter. There are no prescribed documents for the municipalities about progress during the budget year. In practice, most municipalities report to the municipal council twice a year. Budget amendments are usually linked to these reports.

The public entities find the submission of reports four times a year burdensome, partly due to the formats imposed. To submit these reports takes up a relatively large amount of administrative capacity that the public entities would rather use for improving processes, for example. Finally, the usefulness of the implementation reports is not sufficiently clear.

The amendment to the law contains the following proposals:

- Changing the frequency of the reports to at least twice a year: one report after four months and a second after eight months. This is in line with practice in the European Netherlands, where it is customary, though not mandatory, to discuss administrative reports with the municipal council twice a year. The reason for making administrative reports compulsory for the public entities is that their budget cycle is still being developed, whereas municipalities have had decades of experience with this.  
If stricter supervision of the budget is in place, an administrative report must be drawn up at least three times a year. In addition, the island council can determine that it should receive an administrative report more often. This may be done where either the light or the stricter supervisory level is in place. However, the frequency may not be lower than that required by law.
- In addition to the frequency, the nature of the reports will also change. The reports in the current FinBES are implementation reports without any explanation of the relevance for the island council. The proposal is to focus the reports more on the insight and responsibility of the island council, so that it can exercise more effectively its right to set a budget and the associated (horizontal) control of the executive council and so that it has greater involvement in budget implementation. These are therefore management reports, not implementation reports. An implementation report can contain much more technical detail and less policy accountability, but this technical detail is not always relevant for the island council. The island council can use the current information and the developments described and explained in the second administrative report (by 13 October) as input for the discussion and adoption (by 15 November) of the draft budget for the following budget year.
- The design of the administrative report lies with the executive council and the island council and in principle describes the budget and its implementation.. The Minister of BZK will set more detailed rules with regard to the content of the report. In addition, the Minister of BZK may prescribe additional information to be provided by the public entity.

The fourth change does not result from a derogation from the Municipalities Act, but from the Fvw. Among the points regulated by the Fvw is the institution of specific grants and accountability for them. As indicated earlier, this bill does not include a revision of financial relations. It is, however, proposed to include accountability for and monitoring of special purpose grants in this bill. The reason for this is that such accountability is provided via the annual accounts and any additional checks in the regular audit.

The annual accounts of the public entities are complete, like those of municipalities. They therefore also include the income and expenses relating to the special purpose grants. However, such income and expenses often cannot be seen separately because the amounts per grant involved are relatively small. As a result, these amounts are often not an explicit part of the audit. For municipalities:

- the Fvw states that the information about specific grants must be included in the annual accounts (Section 17a).
- it is also stipulated that if the information is not sufficient, the payment of the general grant from the municipal fund may be suspended.
- the Local Authorities Auditing Decree (Besluit accountantscontrole decentrale overheden; hereinafter: Bado) specifies how the auditor should include the specific grants in the audit.

For the public entities, it is proposed that this system should be adopted in a simplified form in Chapter V of FinBES. This means that:

- The obligation of accountability concerning special purpose grants has been adopted, with the possibility of making exceptions by means of an order in council. This could include an exception for small special purpose grants, grants for which European requirements make an alternative stipulation, and very large special purpose grants. It is undesirable to award small special purpose grants, but if this is necessary in certain cases, it is preferable to make use of the option to record and pay the special purpose grants at the time of its award. This avoids a relatively heavy administrative burden for the public entities. In this way, accountability remains complete, because the special purpose grant is still included in the annual accounts and in the Overview of Special Purpose Grants; at the same time, the allocation of the grant is the basis for control, and this approach reflects confidence in the administration of the public entity.  
Very large special purpose grants usually cover several years and can be complex in nature. This may be a reason to deviate from the regular system and to impose additional control and accountability requirements.
- The sanction provisions have been adjusted because suspending the payment of the free grant is disproportionate for the public entities, partly because there are numerous small special purpose grants. Moreover, the sanction imposed on municipalities is relevant to the proper functioning of the SiSa (single information, single audit) system, which has not been chosen for the public entities. Because the proposed supervisory instruments on the islands include more variations than the supervisory instruments for municipalities, sanctions for not providing information about the special purpose grants can be included there (see Paragraph 4.5.6).
- Bado also applies to the public entities, with the exception of Sections 3a and 5(4). This means that the provisions on how the auditor should include special purpose grants in the audit do not currently apply to the public entities. The exception for the public entities can be discontinued, with the caveat that the amounts should be adjusted.

Furthermore, a number of sections from the current FinBES will be harmonised with the Municipalities Act. For example, FinBES currently contains various provisions about 'urgent' expenditure and expenditure that is not included in the budget (for example Sections 24 and 25). The Municipal Act also has provisions for urgent situations (Section 209), but these are worded slightly differently. The proposal is that such provisions should be regulated in the same way. There is no longer any reason for a different approach, and this harmonisation will benefit clarity. In addition, these provisions should be adjusted to take account of the various supervisory levels.

The precise process steps can then be worked out in the supervisory framework (see further under 4.5.6).

Finally, current Section 16 of FinBES is scrapped. This section determines what constitute mandatory expenses. This has no further consequences in FinBES. A similar provision has been included in the Municipalities Act. There, the provision does have consequences, namely that the supervisory authority can include the amounts concerned in the budget and, if necessary, order payment. This section is not used in practice, as the budget has to be complete. If income or expenses are missing, the budget is not complete and it is therefore not clear whether it is balanced; stricter supervision is then possible.

#### 4.3.2 Accounting system

FinBES has provisions from two accounting systems: the cash accounting system and the accruals accounting system. It is more transparent and unambiguous to opt for one system.

The Budget and Accountability (BES Islands) Decree (Besluit begroting en verantwoording BES; hereinafter: BBV BES) assumes the accruals system. BBV BES is based on BBV for provinces and municipalities, in the version current in 2010. At the time, some adjustments were made with the aim of simplifying BBV BES.

To summarise, the cash accounting system has the advantage of being relatively simple. The accruals system is more complex, but provides more insight. This is the system used by municipalities and provinces. The public entities were asked which system they would prefer. They indicated a preference for the accruals system, as they are already used to this system and as it is considered important to be as close as possible to the system of municipalities and provinces.

It is therefore proposed to adjust FinBES so that it is unambiguously based on the accruals system.

Although the current BBV BES is already based on the accruals system, it is important for it to be updated, for the following reasons:

- Some provisions currently included in FinBES are not included in the Municipalities Act in the European Netherlands, but in the Budget and Accountability Decree for Provinces and Municipalities (hereinafter: BBV) (for example Sections 12(2) and (3) of the current FinBES). These provisions will also be introduced into BBV BES for the Caribbean Netherlands, as their content fits better with the provisions in BBV BES.<sup>78</sup> In addition, some proposals for FinBES also have consequences for BBV BES (see Paragraph 4.6).
- BBV BES has some derogations from BBV for provinces and municipalities, in the version of BBV current in 2010. This was based on the assumption at the time that these derogations would make things easier. In practice this was not the way things were perceived.
- BBV for provinces and municipalities has been amended a number of times, most significantly in 2016. These amendments have not yet been assessed for their applicability to the Caribbean Netherlands. This will be done in a revision of BBV BES.
- A final point that is important when analysing BBV BES is that the central government uses the cash accounting system. When special purpose grants are provided, especially if they exceed an annual limit, this can give rise to questions about reconciling the two systems with one another. For example, the central government may record an item of expenditure at the end of the year, but a public entity will not record any expenses in that year because implementation only starts in the following year (the funds received will be shown on the balance sheet of the public entities). A review of BBV BES can determine how to deal with this in a transparent fashion.

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<sup>78</sup> For example, FinBES stipulates that there is one mandatory paragraph in the budget and annual accounts. The other paragraphs are listed in BBV BES.

BBV BES needs to be updated with the entry into force of the relevant amendments to FinBES, as otherwise gaps or ambiguities may arise.

#### *4.3.3 Supporting the public entities with accounting issues*

Municipalities in the European Netherlands can put questions to, among other bodies, the Committee for the Budget and Accountability Decree for Provinces and Municipalities (commissie voor het Besluit begroting en verantwoording provincies en gemeenten; hereinafter: BBV committee). The task of this committee is to explain BBV. The BBV committee is responsible for the unambiguous implementation and application of BBV for provinces and municipalities (Section 75 of BBV). Section 75 also regulates the members that make up the committee. The members are delegated (with a free vote) from all organisations with an interest in BBV, such as municipalities, provinces, water management boards, auditors, supervisory authorities, the Ministry of BZK, the Ministry of Finance and Statistics Netherlands.

There is currently no such committee for the public entities. The public entities may, however, put questions to the auditor and the Minister of BZK. The public entities also have contact with each other. Support for the public entities must be equal to that provided to the municipalities in the European Netherlands.

The situation on the islands, including the development of financial management and the differences with regard to the applicable regulations, is still too different from that of the municipalities and provinces to refer the public entities to the BBV committee. This will probably remain the case after the revision of FinBES and BBV BES. Municipalities have gradually switched to the current accruals system since 1985; it will likewise take some time for the public entities to do so.

The proposal is to set up a BBV BES committee or working group, comparable to the committee in the European Netherlands. This working group should be adapted to the size and working method of the public entities. This can be done by taking care of the composition of the working group, with members from the public entities, the auditors, Cft BES and the Ministry of BZK. The BBV BES working group can also play a role in the revision of BBV BES.<sup>79</sup> A link can be ensured between the BBV BES working group and the BBV committee for provinces and municipalities, to allow the working group and the committee to grow closer together.

#### *4.4 Position of head of finance*

In principle, the public entity decides on the structure of the organisation with due observance of relevant legal provisions and general principles (including segregation of duties, powers, etc) that ensure orderly and verifiable financial management. To this end, various provisions are included in the current FinBES, such as in Sections 34 and 35. These sections also list some tasks of the head of finance. The provisions in the current FinBES lead to various complications. These are as follows:

- Section 35 states that the head of finance is the only official authorised to incur obligations or perform legal acts under private law on behalf of the executive council. However, this is only permitted if the head of finance has given a positive opinion about the executive council's plans, i.e. after the head of finance has checked whether there are sufficient funds for the purpose in the approved budget. If there are no or insufficient funds and the head of finance nevertheless receives instructions from the executive council or the island council, the head of finance must report this to the Minister of BZK. According to the current FinBES, the Minister of BZK must then issue an instruction. The executive council and the head of finance will follow this instruction. The head of finance is therefore obliged to contribute to the administrative and financial supervision of the actions of the island administration, while working for the administration at the same time. The question is

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<sup>79</sup> The BBV committee was established when BBV entered into force in 2004. BBV was developed in the period 1999 – 2002 by the FinVer (financial reporting) working group.



whether the independence of the head of finance is properly safeguarded in this way, as this is a delicate position.

- in the European Netherlands, no specific provisions apply to the head of finance or other related functions, such as that of group controller, with regard to appointment or performance of role in dealings with the Minister of BZK. In municipal practice, friction also arises fairly regularly between the head of finance and/or the group controller and directors and/or the municipal executive. These issues are resolved within the organisation, although long-term situations may be concerned in exceptional cases.

The finance departments of the public entities and the Minister of BZK have indicated that there is a need for explicit safeguards for the position of the head of finance. This is because the head of finance may find himself in a difficult position if he does not consider certain decisions to be lawful and the executive council issues instructions on the basis of these decisions, or if the island council enforces the implementation of the executive council's decisions. The importance of safeguarding the position of the head of finance is recognised. However, the position of the head of finance does not need to be explicitly mentioned in FinBES to this end. Under Section 34(1) of FinBES, the island council determines the basic principles for financial management and for the structure of the financial organisation by island ordinance. This includes the role and task of the head of finance. In principle, the island ordinance and the grant of power of attorney and mandate – with the application of proper segregation of duties – that partly arises from it guarantee that the requirements of lawfulness, efficiency, accountability and control are satisfied. To further ensure that processes run smoothly even though the legal provisions relating to the head of finance will be dropped, it is proposed that the relevant island ordinance or its amendment requires review and approval by the Minister of BZK. The review will examine, among other things, whether there is proper segregation of duties, whether the powers also reflect the nature of the position and whether delegated powers have been allocated at a sufficiently high level in the organisation. This modification will also bring FinBES more closely in line with the financial legislation that applies to municipalities in the European Netherlands.

#### 4.5 Budgetary supervision and supervision of financial management

FinBES mentions various forms of financial supervision. The most important forms of these relate to the balancing of the budget, financial management and the implementation of the budget.

##### 4.5.1 Supervision in the current FinBES

*Budget review by the Minister of BZK:* the current financial supervision of the public entities focuses on the budget and the budget cycle. Section 19 of FinBES indicates that the Minister of BZK must review the budget against various criteria listed in that section. However, these criteria are formulated in a very general way, with the final provision stating that the Minister of BZK must approve the budget, but may withhold approval on the grounds of conflict with the law or with the financial interest of the public entity (Section 19(3) of FinBES).

*Budget supervision process:* The budget supervision process described by the current FinBES can be summarised as follows. The executive council sends the draft budget to Cft BES. Cft BES assesses this and advises the executive council on it. The executive council includes this advice in the budget and then presents the draft budget to the island council (by 1 September at the latest). When presenting the budget, the executive council indicates how the advice of Cft BES has been taken into account. The island council adopts the budget. The budget is sent to the Minister of BZK through Cft BES by 15 November. The Minister of BZK approves the budget. If approval is withheld, spending decisions are submitted to the Minister of BZK until a new draft budget has been adopted and approved.<sup>80</sup>

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<sup>80</sup> In addition, FinBES states that the Minister of BZK will adopt the budget if the island council has not done so (Section 20 of FinBES). As indicated in Paragraph 4.3.1, the proposal is to replace this with the possibility of introducing a stricter supervisory regime.

The procedure for budget amendments in the current FinBES is similar to that for the budget. After the end of the budget year and by 15 July, the public entities will send the annual accounts adopted by the island council with an audit opinion and auditor's report to the Minister of BZK. Finally, the public entities will prepare an implementation report every quarter that is sent to Cft BES. (As indicated in Paragraph 4.3.1, it is proposed that both the frequency and character of this report be adjusted.)

*Instruments available to Minister of BZK:* the main instruments available to the Minister of BZK are: withholding approval (wholly or partially), requesting information, having an investigation carried out, giving instructions (FinBES) and suspending and annulling (WoIBES).

#### *4.5.2 Problems in current budgetary supervision*

There are a number of problems with the current budgetary supervision system. The first is that supervision involves numerous documents and process steps, imposing a high regulatory burden. This is especially problematic because supervision is the same for all three public entities in all circumstances (with the exception of 'substitution') and has the same process steps and the same type of documents. Good 'performance' does not lead to reduced supervision or simplification. If a public entity 'performs' poorly, it is difficult for the Minister of BZK to take action. There are few additional instruments with which the Minister of BZK can intervene, as so many instruments have already been deployed.

A second problem is that the assessment criteria are not clear to the public entities and/or that the point of the criteria is unclear. The current FinBES has many broad provisions on financial supervision that are not explicitly elaborated in law or in a supervisory framework.

A final problem is that many provisions in FinBES focus on financial deficits and their prevention. The practical experience of the past eleven years suggests that it is primarily the quality of financial management that requires attention. Financial supervision, especially the instruments, is not designed for this. The most important instrument available to the Minister of BZK in practice is withholding approval. This is useful for supervising the budget balance, but its use will not resolve problems in financial management. Another possibility is for the Minister of BZK to ask for more information about the budget and budget implementation. The problem here is that a lot of information is requested and supplied in any case (the first problem). Asking for and providing even more information does not usually improve financial management.

#### *4.5.3 Proposal for the three supervisory levels for budget supervision*

It is proposed to introduce three supervisory levels: light, moderate and strict. This is therefore a tiered supervision model. The supervision of the budget will have its own tiered system, as will the supervision of financial management. In addition, it is proposed that every year, the Minister of BZK will determine for each public entity which level applies to the supervision of the budget and which level applies to financial management. This will make a tailored approach possible for the three public entities. Cft BES can advise the Minister of BZK on the level of supervision, either on request or on its own initiative. If the supervisory level is adjusted, the Minister of BZK will in any case seek the advice of Cft BES. Cft BES will advise the Minister of BZK every year on the applicable level of budgetary supervision.

It is of course important for the criteria for financial supervision to be clear in advance. It is therefore proposed to include these criteria (in outline) in FinBES. In addition, the Minister of BZK will draw up a supervisory framework in which the criteria are set out in more detail. Cft BES will be involved in drawing up this supervisory framework. This should make it clear in advance for the public entities what criteria they must satisfy to move to a lighter level.

The criteria for budget supervision and supervision of financial management, as proposed, are based on financial supervision in the European Netherlands. In addition, experiences hitherto with supervision in the Caribbean Netherlands have also been drawn on, for example the establishment of the 'change team' on Bonaire.

This proposal on the revision of financial supervision is essentially in line with the Advice of the Advisory Division of the Council of State.<sup>81</sup> Supervision will be tailored to the public entities. Supervision will be light where possible, but scaled up where necessary. The proposed criteria for supervision are more closely based on the European Netherlands, with the ultimate prospect of the same supervision system. A choice has thus been made in favour of three levels, before possibly having to switch to the instrument of 'gross dereliction of duty'. When the criteria were being worked out in detail, this was found to offer a better fit with the different situations that could arise (see below).

It has also been decided to determine the applicable supervisory level for each public entity on an annual basis. This means that the supervisory level can change every year, as is also the case with regard to the financial supervision of municipalities. The annual determination of the level means that the supervisory instruments need to be flexible and the criteria for supervision sufficiently specific. This is possible for financial supervision and the supervisory level for financial supervision can therefore be established by ministerial decree. It is proposed that the levels for the three public entities should be determined on the entry into force of this bill. Cft BES will be expressly involved in the proposition of the various levels.

In the European Netherlands, financial supervision focuses on the balancing of the budget, in other words the structural and actual balance of the budget. What this means is elaborated in more detail in, for example, the common supervisory framework that the provincial supervisory authorities have drawn up for their supervisory task with regard to municipalities.

European Dutch financial supervision has two levels<sup>82</sup>:

- *repressive supervision* is the standard form of financial supervision. It means that the budget and budget amendments may be implemented (acquire legal force) immediately, without being dependent on prior approval from the Provincial Executive.
- *preventive supervision* is the exceptional form, in which the budget and subsequent amendments must first be approved by the provincial executive before they can be implemented. Until the budget has been approved, the municipality may not incur any obligations or engage in any spending without the prior permission of the provincial executive.

Preventive supervision *is* introduced if the criterion of structural and actual balance is not met. In other words, if the budget is not structurally and actually balanced and, in the view of the provincial executive, it is unlikely that this balance can be achieved by the final year of the long-range estimate at the latest. Preventive supervision *may* be introduced if the statutory submission deadlines have not been met. It is emphasised that this is merely a possibility. The reason for this provision is that the supervisory authority cannot assess whether the budget is balanced if it is not available on time. The same applies to the annual accounts. Failure to adopt and submit the annual accounts<sup>83</sup> on time may also lead to preventive supervision. Finally, a deficit in the annual accounts may lead to the introduction of preventive supervision for the following year's budget. If the supervisory authority regards the deficit as incidental, this will not lead to tighter supervision. Only if the deficit is of a structural nature will this lead to a decision to introduce preventive supervision of the next year's budget.<sup>84</sup>

The supervision of the budget in the European Netherlands is thus lighter than the current supervision in the Caribbean Netherlands. Supervision in the European Netherlands involves fewer steps and fewer documents. There are also different supervisory levels for different situations. The

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<sup>81</sup> The proposals of the Advisory Division of the Council of State are also supported by the General Court of Auditors (accountability audit for Kingdom Relations and BES Funds 2018 and 2019).

<sup>82</sup> Gemeenschappelijk financieel toezichtkader (Common financial supervisory framework), GTK 2020, p. 11

<sup>83</sup> The audit opinion must be included with the annual accounts. If this opinion is missing, the annual accounts are incomplete and preventive supervision may be introduced.

<sup>84</sup> There is debate in the European Netherlands as to whether preventive supervision should also be possible during the current budget year, for example as a result of a structural deficit in the annual accounts..

proposal is to introduce a variant of this in the Caribbean Netherlands. As indicated in this paragraph, the proposal is that there should be three supervisory levels. This is because the budget cycle on the islands is still under development. Another reason is that the public entities do not currently have a balanced budget, partly because a substantial part of the islands' budget consists of incidental government contributions for projects and investments. These incidental contributions usually entail structural operational costs. As a result, the budget of none of the three islands is structurally sound. The light level is not practicable in the current situation. As in indicated in Paragraph 1.1., a review of the free grants and special purpose grants is being considered.

*Light level:* It is proposed to declare the light level applicable if the budget is balanced (sound). This is comparable to repressive supervision in the European Netherlands. As well as the advice of Cft BES, the existing situation (reserves/resilience), any long-range impact of shortfalls in the financial statements, economic and social developments, policy measures, the supervisory levels for the budget and financial management (auditor's statement, high-risk findings) should also be taken into account in the judgement as to whether the budget is balanced. This assessment in order to arrive at a judgement will be described in more detail in the financial supervisory framework.

The 'balanced' standard is described in more detail in the bill. This approach has been chosen because the criteria of assessment for the public entities and/or the relevance of the criteria are not always clear. In the definition of the criteria, alignment has been sought with the provisions of the Municipalities Act: for example, the budgetary balance must be 'structural' and realistic. Consideration was also given to the provisions of the Kingdom Act on Financial Supervision (Curaçao and Sint Maarten) (Rijkswet financieel toezicht Curaçao en Sint Maarten). These criteria will be worked out in more detail in the supervisory framework that is to be drawn up. A budget is referred to as balanced if it is at least the case that:

- the structural income covers the structural expenditure. The general rule for structural income and expenditure is that they are included in the budget for an indefinite period until more detailed decisions are made;
- the budget is complete. All the policies that have been decided on are included in the budget;
- the budget has been realistically estimated, including on a long-range basis. This includes accounting for the actually expected growth or decrease in income and expenditure; and
- the budget is adequately explained, in terms of direct and indirect consequences of policy measures and in terms of external developments.

In the proposed light level, there is no longer any obligation for the public entity to seek advice on the budget, although the executive council may still voluntarily choose to seek advice from Cft BES. Moreover, approval of the adopted budget is not required, as currently stipulated in FinBES. Similarly to the arrangement in the European Netherlands, the budget will be sent to the Minister of BZK after its adoption by the island council.

Unlike in the European Netherlands, where there is no advisory board for financial supervision, the budget will have to be sent to Cft BES at the same time. Cft BES will then issue advice to the Minister within two weeks about the budget and whether there is any reason to set a different supervisory level.

If the Minister judges that the budget is not balanced, a moderate or strict supervisory level will in principle be set. The Minister must announce this by 1 January. However, it may be likely that the budget will be balanced in the next few years and that, partly in view of this, it would be ineffective or unreasonable to switch to a stricter level of supervision. This may be the case, for example, if the budget deficit is (relatively) small and, according to the long-range estimate, a balanced budget is likely to be achieved in the next few years. The nature of the deficit may also be relevant here; for example, it may have arisen in special circumstances leading to an incidental cost that cannot be fully covered by the public entity. In such cases, increasing the supervisory level may have disproportionate consequences for the public entity. The bill therefore provides that

in these exceptional cases the Minister of BZK may decide not to increase the supervisory level. This is only possible if, according to the long-range estimate and in the Minister's view, it is likely that a balanced budget will be achieved in the next few years. This is similar to the system in the Municipalities Act, in which supervision is not made stricter if the long-range estimate shows that it is likely that structural and actual balance will be achieved in the next few years. In view of the position of the public entities, it is considered more appropriate for now for the Minister of BZK to assess this in more detail.

In addition, it is proposed that non-compliance with the timing requirements or a deficit in the annual accounts<sup>85</sup> may lead to a stricter supervisory level. The first of these scenarios is in line with supervision in the European Netherlands, and indirectly the second is too. In the event of a deficit in the annual accounts, the causes and consequences for the current and future budgets are examined. The key point is whether the deficit in the annual accounts is incidental or structural. If it is structural, stricter supervision will be introduced for the next budget.

*Moderate level:* The proposed moderate level applies if the Minister judges that there is a lack of balance in the coming budget year or in the long term. For example, this would apply in a situation where the budget is balanced with one-off funding for structural tasks. As explained above, the Minister of BZK may make an exception to this if it is likely that this budgetary balance can be achieved in the next few years. Moderate supervision may also be initiated if the budget or annual accounts are not submitted in time. In this proposed moderate level, the budget will be submitted to the Minister of BZK for approval after adoption by the island council, in accordance with the current provisions in FinBES. The adopted budget will also be sent to Cft BES, which advises the Minister of BZK on the budget and on whether it is necessary to continue the moderate level. For the subsequent budget amendments and the next draft budget, the advisory steps involving Cft BES will also be applicable again, prior to presentation for adoption by the island council. Moreover, the stricter level of supervision means that an administrative report must be drawn up at least three times a year, instead of twice a year. The third administrative report relates to the final part of the budget year. See also Paragraph 4.3.1.

*Strict level:* The strict level will apply as long as there is no adopted and approved budget. In this case, permission must be requested for incurring any obligations or engaging in any spending. This will remain the case until the island council has adopted a budget that has been approved by the Minister of BZK. The strict level will also apply if the island council has failed to adopt a budget before the start of the budget year to which the budget relates. At the strict level, the provisions that apply to the moderate level also apply, such as the provision of advice by Cft BES on the draft budget and draft budget amendments, the procedure for approval by the Minister of BZK and the mandatory third administrative report. This is comparable to preventive supervision in the European Netherlands. This supervision may be introduced for parts of the budget or for the entire budget.

A simplified overview is given below of the most relevant deadlines relating directly or indirectly to budgetary supervision. In addition to these deadlines, there are also deadlines for making information available for inspection, processes within which there are response deadlines and adjournment periods. The level of supervision is also a factor here.

	Deadline	Notes
Budget year t	By 15 November in year t-1: adoption by the island council and	The executive council makes the budget available for inspection

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<sup>85</sup> This is not about eliminating old deficits. Financial budgetary supervision always focuses on resolving structural deficits; the budget must balance, and if this is not the case, the last tranche of the long-range estimate must balance.

	submission to Cft BES and Minister of BZK (Section 17 of FinBES)	at the island council for at least two weeks before its adoption  If there is stricter supervision of the budget, timely advice from Cft BES on the draft budget is required
Decision at supervisory level	By 1 January, the Minister of BZK announces the supervisory level for budgetary supervision and financial management to the public entity (Section 32a of FinBES). Cft BES advises the Minister of BZK within two weeks after receipt of the budget	If a decision is not taken in time, the most recently decided supervisory level will continue to apply
Administrative reports	By 11 June and by 12 October: administrative reports adopted by the executive council and sent to the island council and, through Cft BES, to the Minister of BZK	At the end of the four and eight-month periods, an administrative report must be drawn up. The island council may set a higher frequency  If there is stricter supervision of the budget, the Minister of BZK may also set a higher frequency
Annual accounts for year t	By 15 July in year t+1: adopted by the island council and sent, through Cft BES, to the Minister of BZK (Section 31 of FinBES)	The executive council makes the annual accounts available for inspection at the island council for at least two weeks before its adoption

The processes will be described in more detail in the financial supervisory framework.

#### 4.5.4 Proposal for the three supervisory levels for financial management

In the Caribbean Netherlands, the quality of financial administration and financial management is not yet at the desired level. Further development of the quality of financial management is very important, as is its supervision.

In the European Netherlands, supervision of financial management is not standard. Questions about the quality of financial management are taken into account when the supervisory authority has to decide whether or not to initiate preventive supervision. However, Section 215 of the Municipalities Act provides a basis for conducting an investigation in a specific case: '*The provincial executive may conduct an investigation at any time into the management and structure of the financial organisation referred to in Section 212(1)*'. Such an investigation has never been conducted.

The instruments in the Municipalities Act do not provide any pointers on how to implement the supervision of the quality of financial management in the Caribbean Netherlands. Another specific set of instruments should be used for this supervision. With this in mind, supervision by authorities in the European Netherlands was examined, such as the supervision of schools. The implementation of the supervision of the public entities as it has taken shape in practice, such as on Bonaire, was also examined.

The proposal concerning the supervision of the quality of financial management is as follows.

*Light level:* This level applies if:

- the audit opinion is unqualified;
- the auditor's report does not contain high-risk findings, and
- the documents from the budget cycle, such as the budget, annual accounts and administrative reports, are submitted on time.

In the light level, no set of instruments is used by the Minister of BZK.

*Moderate level:* This regime may be initiated, after advice has been sought from Cft BES, if one or more of the three criteria referred to under the light level are not met. The precise nature of this assessment cannot be indicated in general. A few pointers will be provided in the supervisory framework. It is proposed that the Minister of BZK will in this case request the executive council to draw up an improvement plan. This plan will focus on the findings and any recommendations in the auditor's report. It is important that there should only be one improvement plan and that the plan should be realistic. This means that the plan is not too extensive and must be feasible within a reasonable period of time. Reporting on the plan to the Minister of BZK and the island council should take place every six months, or more often if the Minister of BZK deems it necessary. This will be regulated in the proposed Section 38a of FinBES.

*Strict level:* It is proposed that if one or more of the three criteria referred to under light supervision are largely unmet, strict supervision should be initiated. In this case, there are serious concerns about financial management. This may be the case if there is an adverse audit opinion, the auditor's report contains high-risk or otherwise serious findings and/or the documents are (consistently) late. The Minister of BZK can then decide on this level of supervision, partly after assessing the advice of Cft BES. It is also not possible to indicate all situations in advance where this supervision would be appropriate. A few pointers are provided in the supervisory framework. Another reason for initiating strict supervision could be if the improvement plan as described for the moderate level fails to produce sufficient improvement, or does do so in time. The Minister of BZK will be advised on this by Cft BES.

At the strict level of supervision, an investigation will be carried out by or on behalf of the Minister of BZK to determine the causes of the failure to carry out the improvement plan drawn up as a measure at the moderate level of supervision. Based on the results of the investigation and after advice from Cft BES, the Minister of BZK can make firm and realistic agreements with an executive council as to which improvements to financial management must be implemented, when these must be completed and how the new situation will look. To support the implementation of these agreements, it can be discussed with the executive council whether it is desirable and possible to send one or more people to provide technical assistance to the public entity to help it implement the agreements made, similar to the 'change team' on Bonaire. In extreme cases, an instruction may be given. Legally, this level will be regulated in Section 38b of FinBES.

In addition to the audit opinion, the auditor will also draw up a management letter. Whereas the auditor's report is primarily retrospective in nature, the management letter mainly looks ahead and contains recommendations on how to address identified risks and shortcomings. The management letter is addressed to the executive council and as such is not public. In the European Netherlands, there is a growing trend for the management letter to be sent to the municipal council. This makes it public and also available for financial supervision. Clearly, however, if a public entity enters a stricter supervisory level in which an improvement plan is necessary, the recommendations from the management letter will be included in this. Finally, in situations where the Minister of BZK considers it really necessary, the obligation to provide information may be invoked in order to request the management letter.

#### *4.5.5 Investigation of specific points for attention with regard to the budget and budget implementation*

Finally, it is possible for information to be obtained about specific points for attention that affect the finances of the public entities, via the general information obligations under WolBES. It is

generally possible that the results of such specific investigations may affect the way in which financial supervision is applied in practice. This is comparable to the investigations that the supervisory authority in the European Netherlands conducts at municipalities. For the Caribbean Netherlands, the proposal is that these investigations and any findings should be related to the supervision of financial management.

It is proposed that the Minister of BZK may investigate one or more matters in more detail every year. This may be done per public entity or for all three public entities together, so that comparisons can be made. Any investigations by the court(s) of auditors will be taken into account when determining the subjects of investigation. Cft BES can advise the Minister of BZK on possible subjects of investigation. The subjects of investigation are announced in advance. As is the case in the European Netherlands, the investigation could relate to new legislation relevant to financial supervision, such as major amendments to BBV BES, or to subjects concerning which there are signs of problems. Examples of investigation subjects are the maintenance of capital assets, participating interests, land policy and the provision of information about special purpose grants. The failure to use up the budget and delays in the implementation of large long-range projects which often accompany such failures could also be a subject.

#### *4.5.6 Supervisory framework*

The proposed supervision involves various criteria and various process steps. It is important that these criteria and process steps are translated into more concrete points and that the supervisees are familiar with what the criteria mean in practice. This will lead to better enforcement. With regard to the current supervision system, the public entities indicate that they do not understand properly how certain provisions should be interpreted, how they are assessed and/or why they are assessed in a certain way. In the European Netherlands, the supervisory authority of the municipalities draws up a supervisory framework and sends it to the municipalities. In addition, there is an overarching national supervisory framework – the common supervisory framework. A supervisory framework provides clarity about what is expected of a supervisee; it is a detailed interpretation of the law. The supervisory framework is established for several years. The version that applies for a particular year, for example the subjects that will receive extra attention, is usually sent to the supervisees in an annual supervision letter.

The Minister of BZK will also draw up a financial supervisory framework for the public entities. Cft BES will be involved in drawing up this supervisory framework. The criteria in the financial supervisory framework for determining the levels of supervision and for using specific supervisory instruments will be described in more detail in this, as will the process steps relating to supervision. Among other benefits, this will contribute to the transparency and predictability of supervision. In addition, annual supervision letters will be sent to each of the public entities, providing more explicit feedback on the results of the supervision. These will address questions such as what the points for assessment were, what improvements there have been and where improvement is still needed. This makes it clearer whether or not steps have been taken by the public entity. Under the proposed system of differentiated supervision, this is in any case a requirement, as the Minister of BZK must indicate as clearly as possible which level (modified or otherwise) applies to the public entity and why.

Because the proposed financial supervision in the Caribbean Netherlands will be closer to financial supervision in the European Netherlands, the supervisory authority for the Caribbean Netherlands will be able to learn from the experience of financial supervision in the European Netherlands. The current supervisory level that applies to municipalities was introduced in 1995, so considerable experience has been gained.

#### *4.6 Supervision of private legal entities with an association with the public entity*

The public entities often have risk-bearing participations in public utilities or sit on the boards of foundations and non-profit organisations. The current FinBES includes provisions on this subject that are consistent with financial supervision. The purpose of this financial supervision is threefold. The supervision is intended to:



- prevent the public entity from borrowing, lending or issuing guarantees through legal entities and getting into financial difficulties as a result;
- prevent the public entity from taking undesirable risks; and
- encourage the public entities to make adjustments to private legal entities on a timely basis.

The Committee for the Evaluation of the Constitutional Structure of the Caribbean Netherlands concluded in 2015 that the financial supervision of private legal entities is ineffective<sup>86</sup>. Among other reasons, this is because the scope of FinBES – and hence of financial supervision – does not extend beyond the collective sector, so that relevant private legal entities remain outside the scope of financial supervision. This point is related to the definitions used in FinBES. These are different from those in BBV BES and in BBV for provinces and municipalities. The Committee also states that the annual accounts are regularly prepared late.

Furthermore, the review of the current FinBES has revealed a number of issues about who may or may not sit on boards of directors or supervisory boards. For example, the current FinBES prohibits officials and directors from sitting on supervisory boards. There is also the question of what role the central government should be able to play on supervisory boards of private legal entities to which central government contributes financially.<sup>87</sup>

It is proposed to change the supervision of private legal entities with regard to the following four points:

- a. the definition of the different types of private legal entities, so that, among other things, the scope of supervision is clear.
- b. ensuring the provision of information by private legal entities to the public entities.
- c. who may sit on the boards of directors and supervisory boards.
- d. the proposed role of the central government in private legal entities.

These points are discussed in more detail below.

*a. Proposal to change definitions of different types of private legal entities*

The current rules and definitions pose some problems. First, there is a problem with regard to the scope of the term 'collective sector'. This term and its definition are derived from the System of National Accounts of the United Nations. These definitions are used internationally for a different purpose, namely statistics to make international comparison possible. The definition includes, in addition to the public entities themselves, private legal entities that are not part of the public entity, but that do belong to the collective sector. A number of criteria are used, such as government control, the fact that the entity should not be a market producer (with market prices) and the requirement that more than 50% of turnover must come from taxes and grants. As a result, some private legal entities do not fall under the term collective sector, even though they are of administrative and financial importance.

The second problem is that FinBES and BBV BES use overlapping and inconsistent definitions. These definitions differ from those used in the European Netherlands. As a result, for example, different terms are used for the same description, which can cause confusion.

- The current FinBES has:
  - the term 'collective sector', as mentioned above.

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<sup>86</sup> Committee for the Evaluation of the New Constitutional Structure of the Caribbean Netherlands, *Vijf jaar verbonden: Bonaire, Sint Eustatius, Saba en Europees Nederland*, ('Connected for five years – Bonaire, Sint Eustatius, Saba and the European Netherlands') 12 October 2015.

<sup>87</sup> This is addressed in, for example, the report by ABDTOPConsult, *Kleinschaligheid vergt ondersteuning, Naar een betere borging van vitale publieke voorzieningen op Caribisch Nederland* ('Small scale requires support, Towards better safeguarding of vital public services in the Caribbean Netherlands'), March 2021. This report concludes that the islands need permanent support for some services, such as an airport. The central government could provide structural support and then also demand more of a say in decision-making. A possible option for achieving this is by creating more control in the Supervisory Board.

- the term 'participation in private legal entities', which refers to any private legal entity in which a public entity has an administrative or financial interest.
- BBV BES has:
  - the term 'collective sector', as defined in FinBES.
  - the term 'participation' with the definition 'an organisation under private or public law in which the public entity has an administrative and a financial interest' (Section 1, under a).
- BBV for provinces and municipalities has:
  - a definition for 'related parties' that is the same as the definition of 'participation' in BBV BES.<sup>88</sup>
  - a definition for 'participation', which is different and more limited than the definition of 'participation' in BBV BES, namely a holding in a private *or* public limited company, in which the province or municipality has shares.
  - no definition for the 'collective sector'.

It is proposed to use the terms and definitions that are customary in the European Netherlands, i.e. those of 'related party' and 'participation'. These definitions will therefore be taken over from BBV for provinces and municipalities. For the Caribbean Netherlands, however, these terms have a broader effect, namely in the context of determining the consolidated debt. In this context, the term 'related party' is used in this proposal instead of collective sector. However, the term 'related party' encompasses more private legal entities than are relevant for the interest expense standard and for debt consolidation. This will be remedied by establishing by ministerial regulation the private legal entities to which the interest expense standard is relevant and whose debt must be consolidated. It is proposed that initially the parties should be included that have already been designated by Statistics Netherlands as belonging to the collective sector. At the same time, this approach offers more opportunity to make adjustments, if this turns out to be necessary in practice.

The proposed adjustment of the definitions is particularly relevant for the public entity of Bonaire, as Bonaire has many related parties. The adjustment has few or no consequences for the public entities of Saba and Sint Eustatius. However, it may become relevant for these public entities, especially for Sint Eustatius, if the recommendations of the report 'Small scale requires support' are followed, as Sint Eustatius will then acquire more private legal entities.

*b. Proposal for the provision of information by private legal entities to the public entities*

If tasks on the islands are performed by a private legal entity, the public entity needs to have a good understanding of the current and future financial position of this private legal entity. For example, the BBV for provinces and municipalities includes a paragraph on related parties and the current BBV BES has a paragraph on participations.

There are two problems with regard to financial insight into private legal entities in the Caribbean Netherlands:

- The terms in FinBES and the BES Civil Code (Burgerlijk Wetboek BES; hereinafter: BW BES) are not completely consistent with each other.
- Some private legal entities have fallen considerably behind in the submission of annual accounts to the public entities.

In the current text of FinBES and BBV BES it is assumed that the annual accounts of the private legal entities and of the public entity that are used will be for the same accounting year. The annual accounts of the public entities are adopted by 15 July after the financial year. The information about the private legal entities must be included in those accounts. This mainly concerns the public entities' balance sheet, the consolidated debt and interest expenditure and

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<sup>88</sup> 'Related parties' also include legal entities under public law. These do not exist on the three islands so far. However, they can be set up, as the Common Regulations Act (Wet gemeenschappelijke regelingen) also applies in the Caribbean Netherlands.

income. Even if the annual accounts of the private legal entities have been adopted in a timely manner within six months in accordance with the current FinBES and do not have a split financial year, it is impracticable to include (i.e. consolidate) them in the public entity's annual accounts for the same accounting year.

Private legal entities are supposed to comply with BW BES for their annual accounts. BW BES prescribes that the annual accounts must be adopted eight months after the end of the financial year; it also permits a split financial year which deviates from the calendar year if this is stipulated in the articles of association. BW BES and the current FinBES are therefore not particularly compatible with each other.

The proposal is to stipulate a period of eight months for the adoption of the annual accounts of the private legal entities with a view to determining the consolidated debt of the public entities. This brings the period into line with that of BW BES, at least if there is no split financial year. Where possible, the private legal entities' current figures will be used for the annual accounts of the public entities. If this is not possible, the private legal entities' provisional figures will be included. An alternative possibility to the use of provisional figures is for the private legal entities' figures from a year earlier to be processed in the annual accounts of the public entity.

Sometimes there is a delay of several years in the adoption and submission of the annual accounts to the public entities.<sup>89</sup> This is not caused by legislation, but it has consequences for the administrative and financial insight of the public entity.

The private legal entity itself is responsible for adopting annual accounts. If the annual accounts are not adopted on time, it is up to the executive council to ensure that the documents are adopted quickly, given the social importance of the tasks of the private legal entities and the public resources involved. It is then up to the island council to remind the executive council of its responsibility in this regard.

The Minister of BZK has no supervisory powers in this respect,<sup>90</sup> but, like the island council, may draw the executive council's attention to the importance of the matter.

The BES Tax Act (Belastingwet BES) also provides for some sanctions for the late adoption of the annual accounts of private legal entities.<sup>91</sup> These sanctions may be effective for private legal entities in general, but for private legal entities with an association with the public entities they have little or effectiveness because of the association in combination with the short limitation period of one year and the relatively small fines. There is also the question of who ultimately pays the fine. Usually the public entity indirectly ends up doing so because it provides the financing of the related party.

It is proposed that supervision of the submission of the annual accounts by the private legal entities should be left primarily to the public entity. The latter will be able to make use of the existing possibilities for exerting pressure that arise from the association with the private legal entity. However, if sufficient pressure is not exerted in this way, the lack of annual accounts may have consequences for the financial supervisory levels in FinBES, as late submission of the annual accounts may lead to a stricter supervisory level being set for the public entity. If a related party

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<sup>89</sup> This problem only occurs on Bonaire. This problem, together with other questions concerning private legal entities (such as the updating of the articles of association, recruitment of directors and supervisory directors), is being taken up by the newly established Participations on Bonaire department (afdeling Deelnemingen op Bonaire). This department is focusing on improving governance concerning participating interests.

<sup>90</sup> Unless he (or another minister, in which case the Ministry of BZK has a coordinating role) makes resources available (Government Accounts Act (Comptabiliteitswet) 2016, Chapter 6).

<sup>91</sup> Under Section 5.10 of the BES Tax Act, there is an obligation for legal entities (so-called Bodies) to file the annual accounts with the inspector of the tax authorities within nine months after the end of the financial year. Failure to do so is a punishable offence under Sect. 8.24a of the BES Tax Act. An administrative fine of up to USD 14,000 may be imposed. The possibility of imposing this penalty is subject to a limitation period of one year (Paragraph 2).

Section 6b of the BES Administrative Fines Decree (Besluit bestuurlijke boeten BES) states that a fine of up to USD 1,400 will be imposed for a first violation. After that, the full penalty amount may be imposed.

fails to submit adopted annual accounts to the public entity, the public entity will not be able to use the data in its own documents in a timely manner.<sup>92</sup> If the private legal entity carries a substantial financial risk, the Minister of BZK may conclude that it is unclear whether the public entity's budget is balanced and whether its financial management is in order. This may then lead to a stricter supervisory level for the public entity, as it will not be known whether the private legal entity has a deficit and/or whether the public entity must intervene in a different way.

The Minister of BZK may determine in its supervisory framework when a substantial financial risk exists. The prevention of backlogs in the submission of annual accounts by private legal entities therefore does not require additional statutory provisions.

*c. Proposal regarding who may sit on boards of directors and supervisory boards.*

The current FinBES stipulates (Section 9(5)) that officials appointed by or on behalf of the public entity or subordinate to it and political office-holders of the public entity may not have a seat on the board of directors of a private legal entity in which the public entity participates. Decisions to appoint and reappoint representatives of an executive council or a public entity in a private legal entity are not taken until a declaration has been received from the Minister of BZK that he has no objection to the appointment or reappointment (Section 9(6) of FinBES). The Minister of BZK may refuse this declaration for a number of reasons, such as that the intended representative lacks sufficient expertise (Section 9(7) of FinBES).

These provisions do not make it sufficiently clear which positions officials and political office-holders may not hold and for which positions the Minister of BZK must issue a declaration of no objection. The reason for this lack of clarity is mainly the lack of definition of what constitutes a representative. It is also unclear whether members of the supervisory board may be officials or political office-holders. Apart from the fact that more clarity is desirable, the provisions must also be workable. The proposal is therefore as follows:

- The prohibition on officials and political office-holders joining the board of directors remains in force in general terms. The prohibition will be extended to the supervisory board. The same considerations apply to both extensions as to being a member of the board. In addition, the Minister of BZK will be given the option of granting an exemption to allow participation in the supervisory board by individual officials or political office-holders of the public entity. This exemption will be granted if the Minister of BZK considers it likely that there will be no conflict of interest. This will make it easier to recruit on the basis of expertise and quality, despite the problems associated with the islands' small scale – at least on Saba and Sint Eustatius – when recruiting suitable candidates.
- In addition, it is proposed to scrap the declaration of no objection when appointing or reappointing a representative.

*d. The proposed role of the central government in private legal entities*

The current FinBES (Section 9(8)) states that the Minister of BZK may give instructions to the representative of the public entity regarding the position to be taken at the meeting of shareholders. This is contrary to the principle of individual responsibility of a private legal entity.<sup>93</sup> In addition, the private legal entities fall under the responsibility of the public entities, because the public entities are shareholders or sit on the board of directors and the tasks concerned are island tasks.

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<sup>92</sup> If the private legal entity is merely a foundation or non-profit organisation to which a subsidy (even a substantial one) is provided, so that there is no related party, the public entity may stop or reduce the subsidy if the annual accounts are not forthcoming for too long. It will of course have to do so in accordance with the legislative and regulatory requirements set for the reduction and/or cessation of subsidies and in accordance with the subsidy arrangements.

<sup>93</sup> crmLiNK, *Naar een actief aandeelhouderschap Onderzoek naar de structuur en werking van overheidsbedrijven op Bonaire* ('Towards an active shareholder structure. Research into the structure and operation of public companies on Bonaire'). September 2019.

The recommendations in the report 'Small scale requires support' are relevant here.<sup>94</sup> The report recommends that in some situations the central government should appoint one or more supervisory directors at a private legal entity. The reason for this recommendation is that the central government regularly makes a structural contribution to island tasks performed by private legal entities through investment (electricity, water, airport, etc). The report examines the influence of the central government at each private legal entity on each island. A suggestion is then made that the central government should appoint one or more supervisory directors. This recommendation is important for improving the balance of resources and responsibilities. The report confines its attention to utilities, airports and seaports.

This is in line with Chapter 6 of the Government Accounts Act, which regulates the supervision of the management of public funds outside central government. This stipulates that the Minister concerned should supervise legal entities, limited partnerships, general partnerships and natural persons practising a profession or business who directly, indirectly or conditionally receive a subsidy, loan, guarantee or contribution in kind with characteristics of a subsidy, loan or guarantee from the central government budget.

It is proposed that where central government makes a structural financial contribution to a private legal entity, it should examine how it can be ensured that it has a say in decision-making, for example by the appointment of a representative on the supervisory board. As explained above, the power of the Minister to give instructions to the representative of an executive council or a public entity in a private legal entity with a view to determining the position to be taken at the shareholders' meeting or board meeting has been scrapped.

#### 4.7 Disposal of property

The current FinBES states that assets (property) must be disposed of at arm's length conditions (prices). Disposals generally require the consent of the Minister of BZK.

The small scale of the islands means that there is usually no real market, making it difficult to determine an arm's length price. An appraisal is therefore used, but the appraisers have few comparisons available for guidance. The appraisers also often have to come from other islands. As a result, appraisal costs are high and the estimated values of the same asset vary widely (by a factor of 2).

In the European Netherlands there is no supervision of disposals of assets by provinces or municipalities.

This form of supervision is perceived as intrusive by the public entities. It is also relatively expensive. Arranging the appraisal often costs more than the proceeds from the disposal. This form of supervision is usually ineffective. The complete abolition of this form of supervision is undesirable, however, because there are situations in which the Minister of BZK must be able to intervene, such as the sale of land or other real estate where it is open to question whether the price is realistic or whether preferential treatment is involved.

It is therefore proposed to introduce differentiated supervision for this form of supervision as well. This means that there will be no supervision by default. The condition for this is that the public entity must draw up rules on disposals of property. These rules of the public entity will apply to all disposals (an orderly and verifiable procedure), in other words including movable property, but the disposal of movable property does not fall within the scope of differentiated supervision. If these rules are sent to the Minister of BZK by the executive council, the public entity may subsequently simply need to send a retrospective overview of real estate disposals, within four months. This

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<sup>94</sup> ABDTOPConsult, *Kleinschaligheid vergt ondersteuning, Naar een betere borging van vitale publieke voorzieningen op Caribisch Nederland* ('Small scale requires support, Towards better safeguarding of vital public services in the Caribbean Netherlands'), March 2021.

overview can be added to the regular budget documents (budget, administrative reports or annual accounts).

If the Minister of BZK believes there is reason to do so, supervision may still be initiated. The grounds for doing so will be the presumption that actions are being taken in conflict with 'the financial interest of the public entity'. This supervision will mean that disposal decisions must be approved by the Minister of BZK. One reason for this may be that the rules of the public entity have been broken without justification and/or that there are indications that real estate is being sold at a very low price. The Minister of BZK will then investigate this evidence or have this investigation carried out by a third party. This investigation may lead to stricter supervision. The supervisory authority may determine that decisions concerning the disposal of some categories of property (such as real estate above a certain estimated value) must be submitted for approval in advance. If the evidence looks serious, the supervisory authority may determine that all disposal decisions must be sent for approval in advance. The strict level may be introduced for up to one year, after which it can be extended for up to one year at a time. The decision on this will lie with the supervisory authority on each occasion. The Minister of BZK will seek advice from Cft BES before any decision to initiate supervision of the disposals. For the sake of completeness, it should be noted that the rules fall within the scope of the suspension and annulment provisions of WolBES.

It is also proposed to confine the provisions regarding the preparation of an overview of disposals and the use of supervision to real estate, shares, bonds and concessions. Disposals of movable assets are therefore not covered. However, it is proposed that the provisions should also apply to the transfer of ground leases. This is because ground leases can involve long-term use (99 years) of the land or property.

Finally, for the sake of completeness, it is proposed to replace the term 'assets' with 'property, shares, bonds and concessions and the granting of ground leases on property'. This description indicates the scope of the subject more clearly.

## **5. Relationship to higher-ranking law**

Chapter 7 of the Constitution forms an important framework for the organisation of the local administration. In the Constitutional amendment of 2017, this chapter is also declared applicable to the public entities insofar as appropriate (see also Paragraph 1.4.3 on this process). WolBES and FinBES elaborate on the Constitutional duty to regulate the organisation of the public entity, the supervision of the island administration, the taxes that may be raised by the public entities and the public entities' financial relationship with the central government.<sup>95</sup> It is also important that Article 132a(4) of the Constitution provides a formal basis for laying down rules and taking other specific measures for the Caribbean Netherlands in view of special circumstances that fundamentally distinguish these public entities from the European part of the Netherlands. In keeping with the 'comply or explain' principle, this bill brings WolBES and FinBES more closely into line with the applicable law for municipalities and provinces.

With regard to the supervision of the island administration, Article 132 of the Constitution provides some important frameworks, but also leaves plenty of scope for legislators to regulate matters in more detail in law. This provides opportunities to take a tailored approach to the public entities by means of the tiered supervision model within FinBES (see also Paragraph 3.2). It should be noted that the situation of gross dereliction of duty is not included in the tiered scheme in FinBES. Taking measures in the event of gross dereliction of duty is an extreme remedy, which may even involve overriding the primacy of the island council and its regulatory powers. This strictest level will always be initiated in a specific law in a formal sense.<sup>96</sup> Among other purposes, the tiered supervision model within FinBES focuses on preventing such a major intervention in local self-government.

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<sup>95</sup> Article 132 in conjunction with 132a of the Constitution.

<sup>96</sup> Section 132(5), second sentence, in conjunction with 132a of the Constitution.

## 6. Relation to national regulations

### 6.1 *Municipal Act*

The provisions for WolBES and FinBES have been brought closer to the arrangements in the Municipalities Act. For example, the provisions regarding suspension and annulment and substitution have been brought into line with the Municipalities Act. However, there are different rules in certain respects. For example, the provincial layer is missing in the Caribbean Netherlands, which means that some tasks have to be assigned elsewhere. Certain matters have also been arranged differently in connection with the transition period in which the public entities find themselves. This includes, for example, the tiered supervision model within FinBES.

On the basis of 'comply or explain', it will always be necessary to consider whether WolBES should be harmonised more closely with or linked to the Municipal Act (and amendments to it).

### 6.2 *Security BES Act*

On 25 April 2022, the Minister of Justice and Security presented the report 'Evaluatie Veiligheidswet BES' ('Evaluation of the Security BES Act') to the House of Representatives of the States General<sup>97</sup>. One of the evaluation report's findings is that the role of kingdom representative as an administrative link between the central government and the islands is not working as intended. Both the revision of WolBES and the evaluation report necessitate an assessment of the kingdom representative's tasks in the area of crisis management: can tasks be discontinued and/or should they be reassigned and, if so, to which official? The judgement on this has not yet been finalised as further investigation needs to be carried out, and is therefore not yet included in the present bill. The necessary amendments to the Security BES Act will be included in the present bill in the memorandum of amendment at the latest.

### 6.3 *Modernisation of state emergency law*

On 6 December 2022, the Minister of Justice and Security, acting partly on behalf of the Minister of BZK, sent a letter to the Senate and House of Representatives containing guidelines and principles for the phased modernisation and reorganisation of (state) emergency and crisis law.<sup>98</sup> In keeping with the 'comply or explain' principle, the development, reorganisation and modernisation of (new) state emergency and crisis law will include an examination of which emergency powers are suitable for application to the Caribbean Netherlands, i.e. whether there is a need for a tailored approach in view of the local context.

### 6.4 *Situation with regard to related legislation*

For the sake of completeness, the situation with regard to related legislation in the areas of integrity, participation, public health and public order and security is briefly described here. Inhabitants of the Netherlands have a right to a public administration that functions properly and acts with integrity. In the area of integrity, the Local Administration (Promotion of Integrity and Functioning) Act will come into effect on 1 January 2023. Candidate administrators, including candidate island commissioners, are required by this law to submit a Certificate of Good Conduct prior to their appointment. In addition, the rules on conflicts of interest and confidentiality, among other things, have been amended. The Ministry of BZK is currently also working on the legal basis for integrity screening for candidate administrators. This means that island commissioners will be required to undergo integrity screening before they are appointed.

The Reinforcement of Participation at Local Level Bill (wetsvoorstel Versterking participatie op decentraal niveau) was presented to the House of Representatives on 23 September 2022. With this bill, the Minister of BZK seeks to strengthen the involvement of local people in the preparation, implementation and evaluation of policy in their municipality, province, water management board or public entity in the Caribbean Netherlands. To this end, the

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<sup>97</sup> Parliamentary Papers II 2021/22, 29 517 and 31 568, no. 221

<sup>98</sup> Parliamentary Papers II 2022/23, 29668, no. 69.

'inspraakverordening' (the regulation in the organic legislation guaranteeing the right of local people to be involved in the preparation of local policy) will be modernised and expanded into a full participation regulation. In addition, the bill establishes in law the possibility of making room at local level for the right of challenge of local people and social actors. The bill does not stand alone, but is supported by accompanying policy.

The government has also introduced a bill to the House of Representatives in the area of public health. The Bill Containing the First Tranche of Amendments to the Public Health Act (wetsvoorstel Eerste tranche wijziging Wet publieke gezondheid) contains rules for an acute and serious emergency as a result of the outbreak of an epidemic.<sup>99</sup> The powers assigned to the mayor and the chair of the security region in the European Netherlands will be exercised by the island governor in the Caribbean Netherlands.

In addition, the text of a bill amending the Opium Act (BES) 1960 (Opiumwet 1960 BES) has been submitted to the Advisory Division of the Council of State for advice. The Division has now issued its advice on this bill.<sup>100</sup> The bill introduces the power for the island governor of the public entities to close premises, on the model of Section 13b of the Opium Act. The bill aims to prevent risks to public health arising from drug use and to counteract the adverse effects of the production, distribution, trade in and use of drugs. Finally, the government has introduced a bill to the House of Representatives in the area of public order and security, which also relates to the Caribbean Netherlands. This concerns the proposal to extend the powers of mayors and the island governor to close premises in the event of a disturbance of public order due to armed violence in or near the said premises, or the threat thereof.<sup>101</sup> To this end, Section 174a of the Municipal Act and Section 177 of WolBES will be amended.

## **7. Financial implications**

The proposed amendments to the law should lead to a structural improvement in the relationship between the central government and the public entities. This also requires additional capacity and investments. In addition to minor incidental costs, there will be additional structural costs compared to the current situation. These costs will be borne (directly or indirectly) by the central government and, apart from the costs relating to increasing the number of island council members and island commissioners, will be incurred from the time of introduction of the legislative amendments; they will therefore have to be included in the budget from 2025. The structural costs associated with increasing the number of island council members and island commissioners will be incurred from the time of the next elections, in 2027. Assuming that the increase (for the public entity of Bonaire) takes place in two steps, these costs will not reach their final level until the subsequent election, in 2031. These costs mainly consist of allowances and remuneration, travel and office costs. In addition, incidental costs will be incurred for the accommodation of the new island council members and island commissioners.

### *7.1 Structural costs and savings*

The structural costs associated with the proposed amendments to the law are estimated at €1,385,000 per year. These costs mainly arise from the establishment by the public entities of a process for collaboration with the European Netherlands, the strengthening of the island governor's cabinet, the increase in the number of island council members and island commissioners and the additional efforts required from the Ministry of BZK to ensure the prerequisites in terms of training and development, administrative and executive power and strengthened administrative relations.

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<sup>99</sup> Parliamentary Papers II 2021/22, 36194, no. 2.

<sup>100</sup> Advice of the Advisory Division of the Council of State of 23 November 2022, reference: W16.22.0191/II.

<sup>101</sup> Parliamentary Papers II 2022/23, 36217, no. 2.



The abolition of the position of kingdom representative will save costs. The structural costs associated with the position of kingdom representative (including support capacity and workplace) amount to approximately €1,000,000. On the other hand, some of the kingdom representative's tasks, especially in the area of supervision, have been assigned to the Ministry of BZK, and the necessary capacity and facilities must be provided for this. For example, capacity is needed for the Ministry of BZK to determine the supervisory level and perform supervision, part of which will take place locally. Where necessary, local workspace must be available (at least temporarily) in order to perform administrative supervision. Because the administrative supervision of the three public entities will be lighter than the current supervision and some of the tasks can be performed by the central government, it is expected that this reassignment of tasks will lead to savings. These savings are estimated at €400,000.

The overview below shows the required structural investments and savings. These are included in the budget of the Ministry of BZK, Directorate-General for Kingdom Relations.

<b>Component</b>	<b>2025 - 2026</b>	<b>2027 - 2030</b>	<b>2031 and beyond</b>
Administrative supervision (reassignment of kingdom representative's tasks)	€600,000	€600,000	€600,000
Implementing promotion of interests	€300,000	€300,000	€300,000
Strengthening island governor's cabinet	€350,000	€350,000	€350,000
Periodic peer-to-peer island visit	€25,000	€25,000	€25,000
Strengthening support for island councils	€350,000	€350,000	€350,000
Youth and civic participation and training for politicians	€150,000	€150,000	€150,000
Increase in number of island council members and island commissioners from 2027		€450,000	€450,000
Increase in number of island council members and island commissioners from 2031			€160,000
Abolition of kingdom representative's position	-€1,000,000	-€1,000,000	-€1,000,000
<b>Total</b>	<b>€775,000</b>	<b>€1,225,000</b>	<b>€1,385,000</b>

No additional structural costs are expected for the time being in connection with the amendment of FinBES (Chapters I – III). However, improving the quality of the financial function in the public entities may lead to higher costs.

## *7.2 Incidental costs*

The implementation of the changes will also be associated with incidental costs. These include costs for the recruitment and selection of personnel to carry out administrative and financial supervision and costs associating with dismantling the kingdom representative's office. These costs are estimated at €100,000 in total. In addition, incidental costs may be incurred due to the increase in the number of island council members and island commissioners, as it is reasonable to assume that accommodation for the final number of island council members and island commissioners will be arranged in part at the time of the first phase of the increase in 2027. The total is estimated at €600,000.

## **8. Administrative burden and regulatory pressure**

The substantive compliance costs and the administrative burden together form the costs associated with regulatory pressure. The government aims to reduce the regulatory burden for citizens, businesses and professionals. The present bill has no consequences for the regulatory burden on these groups. However, an impact can be expected for government. This will be particularly noticeable for the public entities.

For example, the bill reduces the number of implementation reports on the budget from four to two. The island administrations will therefore have to submit fewer reports. Another example is the abolition of the approval of personnel decisions by the kingdom representative. Such approval is no longer required. Finally, under the light regime of supervision of budget implementation, the obligation to request advice on the budget will be abolished.

The bill is based on the principle of strengthening mutual trust and giving the public entities more autonomy. This will also bring the system closer to the system that applies to municipalities in the European Netherlands. On balance, this will result in a lighter administrative burden.

These effects will be noticeable in practice for the public entities. However, given the small scale of the public entities, the administrative burden for professionals can be described as nil.

## **9. Evaluation**

In line with the Advice of the Advisory Division of the Council of State, this bill will be evaluated in five years. The public entities will be expressly involved in this. In addition, there will be ongoing evaluation and monitoring of the various implementation agendas.

## **10. Consultation**

PM

**SECTION BY SECTION COMMENTARY** (*This part of the memorandum has not been translated into English*)

In het wetsvoorstel worden voorstellen gedaan om de WolBES en FinBES genderneutraal te maken. Met de integrale herziening van de WolBES en FinBES is namelijk van de gelegenheid gebruikgemaakt om in lijn met aanwijzing 3.8 van de Aanwijzingen voor de regelgeving, persoonsaanduidingen in de WolBES en FinBES genderneutraal te maken. Dit betreft een redactionele verbetering waarmee geen materiële wijziging is beoogd. Onderdelen die deze redactionele verbetering bevatten worden hierna niet toegelicht.

**Artikel I (WolBES)**

*Artikel I, Onderdeel A (artikel 1 van de WolBES)*

Met dit wetsvoorstel vervalt de functie van Rv en, in enkele gevallen, diens bijbehorende bevoegdheden.<sup>102</sup> Daarom wordt deze niet langer gedefinieerd in artikel 1. Het vervallen van deze functie heeft ook gevolgen voor andere artikelen in de WolBES. Deze zijn veelal redactioneel van aard. Waar de taken van de Rv voortaan bij een ander orgaan worden belegd, zal dit nader toegelicht worden.

*Artikel I, Onderdelen B en DDDDD (de artikelen 9 en 240b van de WolBES)*

Voor het aantal eilandsraadsleden wordt op termijn beoogd aan te sluiten bij het aantal raadsleden in een gemeente van gelijke grootte. Dat betekent dat het aantal eilandsraadsleden afhankelijk zal zijn van het aantal inwoners op de openbare lichamen. Daartoe zal worden aangesloten bij de staffel van artikel 8 van de Gemeentewet.<sup>103</sup> Op basis van het inwonersaantal van 2022 zal deze wijziging voor Bonaire, Sint Eustatius en Saba een verhoging van het aantal eilandsraadsleden naar respectievelijk 19, 11 en 9 betekenen. Deze aanpassing wordt voor Bonaire in twee fasen doorgevoerd ten behoeve van de praktische uitvoering. Voor Sint Eustatius en Saba wordt de verhoging in één keer doorgevoerd. Aanvankelijk wordt in de eerste fase per 1 januari 2027 het aantal eilandsraadsleden met ongeveer de helft van het uiteindelijk verwachte aantal verhoogd voor Bonaire en naar het volledig uiteindelijk verwachte aantal verhoogd voor Sint Eustatius en Saba. In deze fase treedt artikel I, onderdeel B, in werking waarbij het aantal wordt verhoogd naar respectievelijk 15, 11 en 9 eilandsraadsleden. De tweede fase zal effect krijgen met de verkiezingen van 2031. Op 1 januari 2031 zal namelijk artikel 240b in werking treden, waarmee artikel 9 wordt aangepast naar de flexibele staffel, zoals nu ook geldt voor gemeenteraden. Op basis van de huidige bevolkingsaantallen zullen dan het eerstgenoemde aantal zetels gelden. Afhankelijk van de bevolkingsgroei op de openbare lichamen kunnen de aantallen per 1 januari 2031 echter anders zijn.

*Artikel I, Onderdelen PP, QQ, VV, XX, YY en ZZ (de artikelen 95, 96, 102, 104, 105 tot en met 105d van de WolBES)*

In artikel 95 vervalt het uitgangspunt van de 'gezamenlijke' rekenkamer. Daardoor kunnen de openbare lichamen voortaan een eigen rekenkamer instellen op grond van de WolBES. De artikelen 96, 102, 104 en 105 zijn gewijzigd of toegevoegd, zodat hoofdstuk III, afdeling V, van de WolBES meer overeenkomt met hoofdstuk IVa, paragraaf 1, van de Gemeentewet. Het vervallen van de gezamenlijkheid van de rekenkamer is doorgevoerd in andere bepalingen in de WolBES.

Naast de verplichting van een eigen rekenkamer blijft het voor de openbare lichamen mogelijk om een 'gemeenschappelijke' rekenkamer in te stellen met een gemeenschappelijke regeling. Hiertoe is 'Afdeling Va' toegevoegd aan hoofdstuk III. Dit sluit aan op paragraaf 2, hoofdstuk IVa van de Gemeentewet. In de nieuwe afdeling zijn de nodige bepalingen opgenomen voor de instelling van een rekenkamer op grond van artikel 125, eerste lid, van de Wgr. In artikel 105a, dat de basis vormt voor de gemeenschappelijke rekenkamer, wordt een aantal artikelen uit de Wgr buiten toepassing verklaard, gelet op de onafhankelijke positie van de rekenkamer. Het gaat hierbij om

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<sup>102</sup> Zie ook paragraaf 3.1 van het algemeen deel van de toelichting.

<sup>103</sup> Zie ook paragraaf 3.3 van het algemeen deel van de toelichting.

bepalingen over onder meer de overdracht van bevoegdheden aan het gemeenschappelijk orgaan (artikel 10, tweede lid, van de Wgr), de samenstelling van het bestuur (de artikelen 10, derde lid, 15 en 130 van de Wgr), het afleggen van verantwoording aan de eilandsraden (artikel 16 van de Wgr), de informatieverplichting van de leden van het gemeenschappelijk orgaan (artikel 17 van de Wgr) en de openbaarheid van vergaderingen (de artikelen 23 en 128 van de Wgr).<sup>104</sup> In artikel 105b wordt een aantal artikelen uit paragraaf V van hoofdstuk III waarin de bevoegdheden van de rekenkamer staan van overeenkomstige toepassing verklaard.

Het voorgaande betekent dat in ieder openbaar lichaam een rekenkamer werkzaam zal zijn; ofwel de rekenkamer (met als grondslag: artikel 95), ofwel een door verschillende openbare lichamen gezamenlijk ingestelde gemeenschappelijke rekenkamer (met als grondslag: artikel 105a).<sup>105</sup>

*Artikel I, Onderdelen F, GG en HH (de artikelen 16, 85 en 86 van de WolBES)*

De bevoegdheid tot het verlenen van ontheffing en toestemming aan eilandsraadsleden voor bepaalde verboden handelingen (artikel 16, tweede lid) en aan de gezaghebber voor de verplichting om binnen het openbaar lichaam te wonen (de artikelen 85, tweede lid, en 86, eerste lid) wordt belegd bij de Minister van BZK.<sup>106</sup> Daarmee wordt aangesloten bij de artikelen 15, tweede lid, en 71, eerste lid, van de Provinciewet.

*Artikel I, Onderdelen K, YY, HHH, III, JJJ, LLL, MMM en VVV (de artikelen 35, 105, 122a, 123, 126, 135 en 168 van de WolBES)*

In de artikelen 35, vierde lid, en 105, tweede lid, van de WolBES was neergelegd dat eilandsverordeningen met betrekking tot ambtelijke bijstand en de rekenkamer en bijbehorende vergoedingen goedkeuring behoeven van de Rv. De Gemeentewet kent deze toezichtbepalingen niet. Gelet op het principe van 'comply or explain' vervalt daarom artikel 35, vierde lid. In artikel 105 wordt de goedkeuringseis geschrapt zodat de bepaling overeenkomt met artikel 81k van de Gemeentewet. Voor de betreffende eilandsverordeningen is goedkeuring dus niet langer vereist. De Rv wordt ook om goedkeuring gevraagd voor eilandsverordeningen ten aanzien van voordelen ten laste van het openbaar lichaam, anders dan in de vorm van vergoedingen en tegemoetkomingen (artikel 123, tweede lid). De eilandsverordeningen met betrekking tot geldelijke voorzieningen ten behoeve van de leden van de eilandsraad en de commissies, bedoeld in de artikelen 120 tot en met 122, worden naar de Rv gezonden (artikel 122a van de WolBES). Deze vorm van toezicht kent een vergelijkbare bepaling in de Gemeentewet: de goedkeuring is vereist van het college van gedeputeerde staten (artikel 99, tweede lid) en de verordeningen worden met betrekking tot vergoedingen, bedoeld in artikelen 95 tot en met 97, naar haar verstuurd (artikel 98). Met het wetsvoorstel wordt de Rv in de artikelen 122a en 123, tweede lid, van de WolBES vervangen door de Minister van BZK.<sup>107</sup> Dit sluit aan op de artikelen 95 en 96, tweede lid, van de Provinciewet. Tot slot vervallen de overige bepalingen waarin de goedkeuring voor besluiten die zien op de benoeming, bevordering, schorsing en ontslag van de eilandsecretaris, eilandgriffier en de (op de griffie werkzame) ambtenaren vereist is van de Rv (de artikelen 126, tweede lid, 135 en 168, derde lid, van de WolBES).<sup>108</sup>

*Artikel I, Onderdeel M (artikel 38 van de WolBES)*

Naast het aantal eilandsraadsleden, wordt het aantal eilandgedeputeerden verhoogd. Hier wordt aansluiting gezocht bij de staffel van de Gemeentewet waarin het aantal wethouders afhankelijk is van het aantal raadsleden. Volgens artikel 36 van de Gemeentewet is het aantal wethouders maximaal twintig procent van het aantal raadsleden, met dien verstande dat er niet minder dan twee wethouders zullen zijn. Voor de openbare lichamen wordt een verhoogde staffel voorgesteld op verzoek van de openbare lichamen: in artikel 38 van de WolBES is gekozen voor het

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<sup>104</sup> vgl. Kamerstukken II 2000/01, 27751, 3, p. 69.

<sup>105</sup> Zie ook paragraaf 3.4 van het algemeen deel van de toelichting.

<sup>106</sup> Zie ook paragraaf 3.1.2.

<sup>107</sup> Zie paragraaf 3.2.3 van het algemeen deel van de toelichting.

<sup>108</sup> Zie ook paragraaf 3.2.4 van het algemeen deel van de toelichting.

percentage van ten hoogste 25 procent en een minimum van drie wethouders. Gelet op de gefaseerde verhoging van eilandsraadsleden (artikelen 9 en 240b van de WolBES), betekent dit een verhoging van eilandgedeputeerden in Bonaire, Sint Eustatius en Saba naar respectievelijk 4, 3 en 3 in 2027. Bonaire krijgt naar verwachting een extra eilandgedeputeerde in 2031. Saba en Sint Eustatius behouden naar verwachting beide drie gedeputeerden. Mocht het aantal eilandsraadsleden per 2031 echter anders zijn (vanwege andere bevolkingsaantallen), dan kan dit maximum aantal eilandgedeputeerden wijzigen.

*Artikel I, Onderdelen R tot en met U en FF (de artikelen 49 tot en met 52 en 83 van de WolBES)*

In artikel 49 van de WolBES wordt geregeld dat aan het begin als aan het einde van de ambtsperiode, eilandgedeputeerden informatie verschaffen over hun privévermogen en dat van hun echtgenoot (financial disclosure). Op dit moment moet deze informatie worden verschaft aan de Rv. Artikelen 50 tot en met 52 gaan over de bewaartermijn en geheimhoudingsplicht van en het, bij het niet tijdig indienen, onverwijld melding doen bij de gezaghebber. Deze bepalingen dienen ter bevordering van de bestuurlijke integriteit van het openbaar lichaam. Dit is een taak die primair toekomt aan de gezaghebber (artikel 172, tweede lid, van de WolBES).

Deze verplichting om informatie te verschaffen aan de Rv geldt ook voor de gezaghebber (artikel 83 van de WolBES). Aangezien het belangrijk is dat de informatie kan worden neergelegd bij een derde, wordt voorgesteld dat dit de Minister van BZK zal zijn voor de gezaghebber.

*Artikel I, Onderdelen Z en AA (de artikelen 73, 73a, 73b en 73c van de WolBES)*

Momenteel kent de WolBES maar één bepaling die ziet op de (her)benoeming en het ontslag van de gezaghebber: artikel 73. Gelet op het principe van 'comply or explain' en aangezien met het vervallen van de Rv geen inhoudelijke verschillen zijn met de (her)benoemings- en ontslagprocedure van de commissaris van de Koning, zal voortaan aangesloten worden bij de artikelen 61 tot en met 61c van de Provinciewet.<sup>109</sup> De procedure met betrekking tot de (her)benoeming en ontslag van de burgemeester, neergelegd in artikelen 61 tot en met 61c van de Gemeentewet, komt overeen met die van de gezaghebber, met als verschil dat er geen rijksorgaan is die een soortgelijke rol vervult als de commissaris van de Koning. De Minister van BZK zelf leidt net als bij de benoeming van de commissaris van de Koning de procedure. Het voorgaande betekent voor de WolBES dat de benoeming, herbenoeming en het ontslag van elkaar worden losgetrokken (de artikelen 73, 73a en 73b). Nadere regels over de benoeming en herbenoeming, die nu neergelegd zijn in het Besluit benoemingsprocedure gezaghebber BES, worden opgenomen in de nieuwe bepalingen. Een delegatiegrondslag is dan ook niet meer nodig. Daardoor is de procedure overzichtelijk en volledig weergegeven in de regeling. Inhoudelijk wordt verder opgemerkt dat door aansluiting op de systematiek van de Gemeentewet en Provinciewet en met het vervallen van de functie van Rv, de eilandsraad meer inspraak krijgt. Dat komt omdat hij nu het recht van aanbeveling krijgt (artikel 73, vijfde lid). Daarmee is de eilandsraad voortaan ook belast met het instellen van een vertrouwenscommissie (artikel 73, derde lid).

*Artikel I, Onderdelen LL en MM (de artikelen 90 en 91 van de WolBES)*

Artikelen 90 en 91 zien op de waarneming van functie van gezaghebber. Artikel 90 wordt aangepast en komt nu overeen met de artikelen 77 van de Gemeentewet en 75 van de Provinciewet, op het doen van een schriftelijke mededeling aan de Minister van BZK na. De bepaling bevat nu twee waarnemingsregelingen: één voor het ambt van gezaghebber en één voor het voorzitterschap van de eilandsraad. Met het vervallen van de functie van Rv en gelet op het uitgangspunt om de lokale autonomie te versterken, wordt het ambt van gezaghebber voortaan waargenomen door een door het bestuurscollege aan te wijzen eilandgedeputeerde. Het voorzitterschap wordt waargenomen door het langstzittende of oudste eilandraadslid of aangewezen door de eilandsraad (artikel 90, eerste lid). Het laatste geldt ook voor de waarneming van alle eilandgedeputeerden (artikel 90, tweede lid). Artikel 91 is nieuw en komt overeen met de artikelen 78 van de Gemeentewet en 76 van de Provinciewet, zij het dat het de Minister van BZK is

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<sup>109</sup> Zie ook paragraaf 3.1.3 van het algemeen deel van de toelichting.

die in afwijking van artikel 90 kan voorzien in de waarneming indien de Minister dat in het belang van het openbaar lichaam nodig oordeelt.<sup>110</sup>

*Artikel I, Onderdeel HHH (artikel 122a van de WolBES)*

In artikel 122a worden eilandsverordeningen omtrent geldelijke voorzieningen ten behoeve van de leden van de eilandsraad en commissies, zoals reis- en verblijfkosten bedoeld in artikelen 120 tot en met 122, voortaan gezonden aan de Minister van BZK in plaats van de Rv. Dit sluit aan op artikel 95 van de Provinciewet.

*Artikel I, Onderdeel XX, FFFF, HHHH, IIII, JJJJ en KKKK en artikel II, onderdeel EE (de artikelen 104, 183, 185, 186, 186a van de WolBES en artikel 38 van de FinBES)*

De Wet versterking decentrale rekenkamers<sup>111</sup> wijzigt met ingang van 1 januari 2023 de Gemeentewet, Provinciewet, Waterschapswet en Comptabiliteitswet 2016 met betrekking tot de decentrale rekenkamers in Europees Nederland. Met deze wet worden eigen of gemeenschappelijke, onafhankelijke rekenkamers verplicht in alle gemeenten en provincies. Ook worden de onderzoeksbevoegdheden op enkele punten uitgebreid, ten aanzien van private partijen waarmee gemeenten en provincies inkoop- en contractrelaties hebben, waaraan zij subsidies, lening of garantie verstrekken en ten aanzien van gezamenlijke overheidsdeelnemingen. Gelet op het uitgangspunt van 'comply or explain' worden de wijzigingen overgenomen in de WolBES, op één technische uitzondering na: in het nieuwe artikel 185, eerste lid, onder d, wordt alleen het onderzoek naar subsidies verstrekt door het openbaar lichaam geregeld. Anders dan in het nieuwe artikel 184, eerste lid, onder d, van de Gemeentewet, is het niet mogelijk voor de rekenkamer om onderzoek te verrichten naar verstrekte leningen en garanties. Op grond van artikel 11, eerste lid, van de FinBES mogen de openbare lichamen namelijk geen leningen of garanties verstrekken aan derden. Voor het overige wordt hoofdstuk IV, Afdeling V, nagenoeg op gelijke wijze gewijzigd.

*Artikel I, Onderdeel OOO (artikel 141 van de WolBES)*

Artikel 141 van de WolBES vervalt. In dit artikel is geregeld dat bij indeplaatsstelling de Rv beschikt over de bevoegdheid van het taakverwaarlozende bestuursorgaan tot toepassing van bestuursdwang. In de Wet revitalisering generiek toezicht is geregeld dat het indeplaatsstellende orgaan voortaan over alle bevoegdheden beschikt die het taakverwaarlozende bestuursorgaan bezit. Soortgelijke bepalingen in de Gemeentewet (artikel 135) en Provinciewet (artikel 132) vervielen daarmee. Daarvoor zijn de huidige artikelen 124c van de Gemeentewet en 121a van de Provinciewet in het leven geroepen. Bij laatstgenoemde artikelen wordt in dit wetsvoorstel met het gewijzigd artikel 231 WolBES aangesloten.

*Artikel I, Onderdeel WWW (artikel 172 van de WolBES)*

In artikel 172 wordt verduidelijkt dat de gezaghebber een taak heeft om aan de minister wie het aangaat besluiten en niet-schriftelijke beslissingen voor te leggen die naar diens oordeel voor vernietiging in aanmerking komen (derde lid, onderdeel b). Deze taak bestond al op grond van artikel 223 van de WolBES. Vanwege het vervallen van de functie van de Rv, die een vergelijkbare taak had, wordt deze taak echter des te belangrijker. Daarom wordt het passend geacht deze taak van de gezaghebber in het kader van het interbestuurlijk toezicht expliciet te benoemen in artikel 172.

Verder krijgt de gezaghebber een expliciete taak om de Minister van BZK te informeren over aangelegenheden die de openbare lichamen betreffen (derde lid, onderdeel a). De gezaghebber krijgt hiermee een rol als verbinder tussen de openbare lichamen en het Ministerie van BZK. Ook is de gezaghebber voortaan belast met al het overige ter bevordering van goed bestuur in het openbaar lichaam (derde lid, onderdeel c). Voornoemde taken lagen eerst bij de Rv in artikel 204, eerste lid, onderdelen a, h en j.

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<sup>110</sup> Zie ook paragraaf 3.1.3 van het algemeen deel van de toelichting.

<sup>111</sup> Stb. 2022, 430.

*Artikel I, Onderdeel AAAA (artikel 179 van de WolBES)*

Artikel 179 kent de gezaghebber de bevoegdheid toe om in een lokale noodsituatie of in geval van vrees daarvoor een noodverordening af te kondigen. De bepaling wordt aangepast zodat de gezaghebber in plaats van de Rv ook de Minister van BZK van de algemeen verbindende voorschriften inlicht (tweede lid). Deze rol komt overeen met die van de commissaris van de Koning in artikel 176, tweede lid, van de Gemeentewet. Bij niet bekrachtiging van de noodverordening door de eilandsraad kan de gezaghebber voortaan administratief beroep instellen bij de Minister die de werking van de voorschriften kan opschorten (derde en vierde lid).

*Artikel I, Onderdeel QQQQ (artikel 214a van de WolBES)*

Artikel 214a is nieuw en sluit aan op artikel 182 van de Provinciewet dat gewijzigd wordt met het wetsvoorstel bevorderen integriteit en functioneren decentraal bestuur.<sup>112</sup> Hiermee krijgt de commissaris van de Koning de bevoegdheid om alle vergaderingen, waaronder besloten vergaderingen en vergaderingen van het bestuurscollege, bij te wonen. Ook kan de commissaris van de Koning alle stukken en bescheiden inzien die deze nodig acht in het kader van diens verantwoordelijkheid voor het adviseren en bemiddelen bij verstoorde bestuurlijke verhoudingen en het bevorderen van de bestuurlijke integriteit in een gemeente. Vanwege het vervallen van de functie van Rv ontbreekt een rijksorgaan die eenzelfde rol heeft als de commissaris van de Koning. Daarom wordt de bevoegdheid neergelegd bij de Minister van BZK. Hoewel het wetsvoorstel bevorderen integriteit en functioneren decentraal bestuur ook de WolBES wijzigt, is het nieuwe artikel 241a hierin niet opgenomen omdat in een eerder stadium onduidelijkheid bestond over de positie van de Rv. Daarom wordt de wijziging meegenomen in dit wetsvoorstel.

*Artikel I, Onderdelen RRRR, SSSS, UUUU, VVVV, WWWW, ZZZZ, AAAAA en BBBB*

*(de artikelen 219, 220, 222, 223, 224a, 226a, 228, 230 tot en met 232d van de WolBES)*

Er worden in deze bepalingen wijzigingen voorgesteld met betrekking tot het interbestuurlijk toezicht. De voorgestelde wijzigingen sluiten aan op de Gemeentewet en Provinciewet die in 2013 zijn aangepast met de Wet revitalisering generiek toezicht.<sup>113</sup> Er wordt voor deze artikelen primair aangesloten bij de Provinciewet in plaats van bij de Gemeentewet, omdat bij het toezicht op de gemeenten een grote rol is voor de provincie. Een dergelijke bestuurlijke tussenlaag ontbreekt in Caribisch Nederland, door het vervallen van de Rv. Bij provincies wordt het toezicht direct uitgeoefend door het Rijk. Dit past dus beter bij de situatie in Caribisch Nederland.<sup>114</sup>

*Onderdelen RRRR en SSSS:* De artikelen 219 en 220 worden aangepast om te verduidelijken welke artikelen van toepassing zijn bij schorsing en vernietiging van een niet-schriftelijke beslissing van het eilandsbestuur gericht op enig rechtsgevolg. Bij dergelijke beslissingen is onder de huidige WolBES ook al schorsing en vernietiging mogelijk, maar welk wettelijk kader precies geldt wordt niet nader geregeld. Dat wordt met deze wijzigingsvoorstellen verhelderd.

*Onderdelen UUUU en VVVV:* De taak van de Rv om besluiten voor te dragen voor schorsing en vernietiging vervalt. Daarom komt artikel 222 te vervallen. In verband daarmee worden ook de bepalingen ten aanzien van de gezaghebber aangepast, zodat diens taak kan worden uitgevoerd zonder tussenkomst van de Rv. Dat betekent dat ook de verwijzing in artikel 223, derde lid, naar artikel 222, tweede lid, betreffende de uitvoering van een besluit dat is voorgedragen voor vernietiging, wordt vervangen door zelfstandige bepalingen. Hiermee wordt geen inhoudelijke wijziging beoogd.

*Onderdelen WWWW en ZZZZ:* De artikelen 224a en 226a van de WolBES komen overeen met de artikelen 275 en 278a van de Gemeentewet, en de artikelen 268 en 271a van de Provinciewet. Hierin is geregeld dat bij het besluit tot schorsing of vernietiging een voorlopige voorziening kan

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<sup>112</sup> Stb. 2022, 504.

<sup>113</sup> Stb. 2012, 233.

<sup>114</sup> Zie ook paragraaf 3.2.2 van het algemeen deel van de toelichting.

worden getroffen. Met de voorziening kunnen de gevolgen van schorsing en vernietiging van het gehele besluit die niet zijn beoogd, worden voorkomen. Bij de schorsing geldt de voorziening voor de duur van de schorsing, bij de vernietiging totdat een nieuw besluit is genomen.

*Onderdeel AAAAA:* Artikel 228 van de WolBES komt overeen met artikel 281 van de Gemeentewet en artikel 274 van de Provinciewet. Het bevat de hoofdregel voor het traject na gebruik van het instrument vernietiging, namelijk dat het orgaan dat het vernietigde besluit heeft genomen een nieuw besluit neemt. Dit geldt alleen voor medebewindsbevoegdheden. De hoofdregel kent twee uitzonderingen:

1. In het vernietigingsbesluit is het nieuwe besluit opgenomen. Dit kan alleen als het eilandsbestuur niet over beleidsvrijheid beschikt (zie artikel 226a, tweede lid);
2. In het vernietigingsbesluit is opgenomen dat het eilandsbestuur geen nieuw besluit neemt (artikel 226a, derde lid). Dit is het geval als het eilandsbestuur niet bevoegd was om op te treden.

Als het eilandsbestuur een nieuw besluit dient te nemen, zal het rekening moeten houden met eventuele aanwijzingen en termijnen die zijn opgelegd in het vernietigingsbesluit (de artikelen 226a, vierde lid, en 228, tweede lid). Indien hier niet aan wordt voldaan kan de regeling van indeplaatsstelling van toepassing zijn.

*Onderdeel BBBBB:* De regeling betreffende indeplaatsstelling bij taakverwaarlozing bij medebewind wordt in lijn gebracht met de regeling in de artikelen 120 tot en met 121f Provinciewet. Dit betekent dat indeplaatsstelling plaatsvindt door het Rijk, in plaats van door het bestuurscollege bij taakverwaarlozing door de eilandsraad of door de Rv bij taakverwaarlozing door het bestuurscollege of de gezaghebber. Dit past beter binnen de bestuurlijke verhoudingen. Bovendien worden er diverse waarborgen toegevoegd die de positie van het eilandsbestuur versterken. Een verschil met de regeling in de Provinciewet is dat de vakminister alleen over kan gaan tot indeplaatsstelling in overeenstemming met de Minister van BZK (zie artikel 230, eerste en vijfde lid). Dit gelet op de adviezen en aanbevelingen van de Afdeling advisering van de Raad van State en de IBO-werkgroep voor versterking van de coördinerende rol van de Minister van BZK.<sup>115</sup> Wat betreft de uitvoering van de indeplaatsstelling zal een beleidskader worden vastgesteld. Voorgesteld wordt artikel 232 van de WolBES te schrappen. Dit artikel dat bij de wet voorzieningen kunnen worden getroffen bij grove taakverwaarlozing door het bestuur van een openbaar lichaam. De reden hiervoor lag in het gegeven dat bij de totstandkoming van de WolBES de Grondwettelijke regeling met betrekking tot grove taakverwaarlozing (artikel 132, vijfde lid, van de Grondwet) nog niet gold voor de openbare lichamen. Nu dat wel het geval is (zie artikel 132a, tweede lid, van de Grondwet), kan artikel 232 van de WolBES vervallen. Nu artikel 232 geschrapt wordt, heeft de paragraaf enkel nog betrekking op indeplaatsstelling. Daarom wordt voorgesteld deze paragraaf ook zo aan te duiden.

Artikel 232a regelt dat de vakminister ambtenaren kan belasten met de taak toezicht te houden op de uitvoering van medebewindstaken door het eilandsbestuur. Het betreft hier, anders dan artikel 121c van de Provinciewet, ook taken op grond van de WolBES gelet op de bijzondere status van de openbare lichamen. Dit geldt eveneens voor de verstrekking van systematische informatie aan de minister wie het aangaat over de uitvoering van de WolBES en FinBES als andere wetten (artikel 232d van de WolBES).

#### *Artikel I, Onderdeel TTTT (artikel 221 van de WolBES)*

In dit artikel 221 is geregeld dat de gezaghebber een eilandbesluit van algemene strekking, dat niet is bekendgemaakt in het afkondigingsblad van het openbaar lichaam, binnen twee dagen na de bekendmaking daarvan aan de Rv zendt. Deze bepaling vervalt, omdat elk eilandbesluit bekendgemaakt dient te worden in het afkondigingsblad, bedoeld in artikel 2, vierde lid, van de Bekendmakingswet.

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<sup>115</sup> Zie ook paragraaf 2.2.6 van het algemeen deel van de toelichting.



*Artikel I, Onderdeel YYYY (artikel 226 van de WolBES)*

In dit artikel 226 wordt een onjuist verwijzing naar de Wet op Raad van State gecorrigeerd.

*Artikel I, Onderdeel CCCCC (artikel 234 van de WolBES)*

Deze bepaling ziet op overgangsrecht in verband met het vervallen van de functie van Rv. Deze bepaling heeft betrekking op alle wettelijke taken en bevoegdheden van de Rv. Voor zover de taken en bevoegdheden worden belegd bij een ander bestuursorgaan, zal dit andere bestuursorgaan fungeren als rechtsopvolger. Dat betekent dat dit bestuursorgaan aanvragen, bezwaren en beroepen zal behandelen vanaf het moment dat de functie van Rv vervalt. Sommige taken en bevoegdheden komen tegelijk met de functie van Rv te vervallen. Mocht er in die gevallen sprake zijn van een nog lopend bezwaar of beroep, zal de Minister van BZK optreden als rechtsopvolger (derde lid). Dit om te voorkomen dat er een gat valt.

Een vergelijkbare regeling geldt voor archiefbescheiden: voor zover de taken en bevoegdheden worden belegd bij een ander bestuursorgaan en deze zaken nog niet zijn afgedaan, zal dit andere bestuursorgaan zorgdragen voor de archivering volgens de Archiefwet BES. De Minister van BZK zal zorgdragen voor de overige archiefbescheiden.

## **Artikel II (FinBES)**

*Artikel II, onderdeel A (artikel 1 van de FinBES)*

Sommige definities zijn aangepast of termen vervangen om deze te verduidelijken en meer in lijn te brengen met Europees Nederland (zie ook paragraaf 4.6 van het algemeen deel van de toelichting).

*Eerste lid, onder c:* In lijn met deze definitie, wordt voor de gehele FinBES telkens voorgesteld om waar nodig de term "College" te vervangen door "College financieel toezicht". Hiermee wordt geen inhoudelijke wijziging beoogd, maar enkel een meer consequent woordgebruik. Specifiek gaat het om de onderdelen B (deels), C (deels), D (deels), E (deels), en F.

*Eerste lid, onder e, g en h:* Deze definities komen overeen met de definities in het Besluit begroting en verantwoording provincies en gemeenten. Daarbij wordt opgemerkt dat het "financieel belang", als gedefinieerd onder h, niet moet worden verward met "het financiële belang van het openbaar lichaam".

*Eerste lid, onder f:* Deze term is relevant voor de rentelastnorm die geldt voor de openbare lichamen en de geconsolideerde schuld. In de huidige FinBES worden de aangewezen verbonden partijen aangeduid als de *collectieve sector*. Deze term sluit echter niet goed aan bij de praktijk. In plaats daarvan wordt aangesloten bij de term *verbonden partij* zoals ook gedefinieerd in het Besluit begroting en verantwoording provincies en gemeenten. Echter niet alle verbonden partijen dienen te worden betrokken bij de berekening van de geconsolideerde schuld. De relevante partijen worden bij ministeriële regeling aangewezen als *aangewezen verbonden partijen*.

*Eerste lid, onder h, i en j:* Deze definities zijn aangepast op het wijzigen van de term *collectieve sector* naar *aangewezen verbonden partijen*. Ook is de terminologie aangepast op het baten-lastenstelsel.

*Artikel II, onderdeel B (artikel 2 van de FinBES)*

In het eerste lid wordt tot uitdrukking gebracht dat het Cft BES met dit wetsvoorstel de status heeft van adviescollege. Zie ook paragraaf 2.2.9 van het algemeen deel van de toelichting. De kaderwet Adviescolleges is niet van toepassing.

De aanpassingen in het derde lid en het nieuwe vierde lid betreffen een wetstechnische verduidelijking van de wijze waarop leden van het Cft BES worden benoemd. Hiermee is geen materiële wijziging beoogd.

Het negende lid wordt aangepast in verband met het vervallen van enkele besluiten gericht op de vergoeding, waarnaar verwezen werd in deze bepaling. Met deze wijzigingen wordt niet beoogd verandering aan te brengen in de vergoeding voor leden van het Cft BES.

*Artikel II, onderdeel C (artikel 3 van de FinBES)*

*Eerste lid:* Aangezien de functie van Rv komt te vervallen met dit wetsvoorstel kan deze hier ook komen te vervallen.

*Vierde lid:* Voorgesteld wordt om de regeling voor de openbaarmaking van nevenfunctie van leden van het Cft BES aan te passen in lijn met de wijzigingen in de Wet bevorderen integriteit en functioneren decentraal bestuur<sup>116</sup> op het gebied van de openbaarmaking van nevenfuncties van decentrale bestuurders. Dit betekent dat de nevenfuncties terstond openbaar gemaakt moeten worden na de benoeming van een lid. Bij het aanvaarden van een nieuwe functie zal de openbaarmaking hiervan ook terstond plaats moeten vinden, in plaats van bij een jaarlijkse publicatie. Verder wordt voorgesteld dat de openbaarmaking plaatsvindt op elektronische wijze. Dat kan dan bijvoorbeeld door het vermelden van de nevenfuncties op de website van het Cft BES. Dit is een simpeler procedure dan vermelding in de Staatscourant en de afkondigingsbladen van de openbare lichamen. Anders dan wordt geregeld voor decentrale bestuurders, hoeft terinzagelegging niet plaats te vinden bij het Cft BES zelf. Dit heeft er mee te maken dat het Cft BES fysiek niet gevestigd is op Bonaire, Saba of Sint Eustatius. Het ter inzage leggen bij het secretariaat van het Cft BES zou daarom weinig toevoegen voor de toegankelijkheid van de informatie.

#### *Artikel II, onderdeel D (artikel 4 van de FinBES)*

De taakomschrijving van het Cft BES wordt aangepast in lijn met taken die passen bij een adviescollege wat adviseert over de financiële organisatie van de openbare lichamen en de uitvoering van het interbestuurlijk, financieel toezicht daarop van de Minister van BZK. Zie ook bijlage 2 voor een overzicht van de taken van het Cft BES onder het wetsvoorstel en de huidige FinBES.

Onderdeel van de aanpassingen in het kader van de rol van het Cft BES als adviescollege is dat wordt voorgesteld het huidige vierde lid te laten vervallen. De bevoegdheden van de Minister van BZK om beleidsregels te stellen en aanwijzingen te geven met betrekking tot het Cft BES worden namelijk niet passend geacht bij een onafhankelijk adviescollege.

Daarnaast wordt een aantal aanpassingen gedaan in verband met het verhelderen van de tekst.

*Eerste lid:* Het bestuurscollege kan het Cft BES verzoeken om advies over de financiële functie van het openbaar lichaam. Concreet gaat het daarbij om het advies in het kader van de begroting, het financiële beleid en het financiële beheer. Deze mogelijkheid om uit eigen beweging advies te vragen bestaat naast het vaste advies van het Cft BES bij begrotingsvoorstellen in het geval van verzwaaard toezicht op de begroting (zie de bepalingen onder § 4 Financieel toezicht op de begrotingscyclus). In het geval de eilandsraad een advies van het Cft BES wil, kan de eilandsraad het bestuurscollege oproepen om een advies te vragen door middel van een motie.

Daarnaast ligt een belangrijke taak van het Cft BES bij het adviseren van de Minister van BZK in het kader van het interbestuurlijk, financieel toezicht. Daarbij kan het Cft BES zowel gevraagd als ongevraagd adviseren. Op verschillende plaatsen in de FinBES wordt geregeld dat stukken van het openbaar lichaam door tussenkomst van het Cft BES aan BZK worden gestuurd. Het Cft BES kan er daarbij voor kiezen om over deze stukken (al dan niet gelijktijdig met het doorzenden) een advies uit te brengen. Naast deze algemene adviesmogelijkheden geldt een aantal vaste adviesmomenten op basis van andere wettelijke bepalingen, zoals het advies bij het verzwaren van het toezicht op de begroting of het financiële beheer. In geval er geen besluit tot verzwaring is, is de Minister van BZK niet verplicht een advies te vragen, maar staat het Cft BES vrij om op basis van deze bepaling een advies uit te brengen over het passende toezichtniveau.

*Tweede en derde lid:* Deze leden zijn afgeleid van artikel 24 van de Kaderwet adviescolleges en ziet op de reactie van de Minister op een advies van het Cft aan de Minister. Hierbij zal het eilandsbestuur ook worden geïnformeerd over de inhoud van het advies, als dit al niet eerder is gebeurd. Omdat het Cft BES adviseert over de uitvoering in plaats van over algemeen verbindende voorschriften of te voeren beleid, wordt een kortere termijn dan drie maanden mogelijk geacht. De termijn wordt hier vastgesteld op zes weken. Wel is er een mogelijkheid de termijn te verlengen

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<sup>116</sup> Kamerstuk 35 546. Voor nadere toelichting: zie de eerste nota van wijziging (nr. 8).

als het in een specifiek geval niet haalbaar is. Daarnaast zal de termijn in de praktijk korter zijn als het advies verband houdt met een besluit dat op kortere termijn wordt genomen.

*Vierde lid en vijfde lid:* Het is eveneens van belang dat het bestuurscollege reageert op adviezen die aan het bestuurscollege zijn gericht. Daarom wordt dit ook voor het bestuurscollege geregeld met deze bepalingen.

*Artikel II, onderdeel E (artikel 5 van de FinBES)*

In dit artikel wordt verduidelijkt dat de taken van het Cft BES liggen op het gebied van advisering van de toezichthouder (de Minister van BZK) en de bestuurscolleges van de openbare lichamen. Verder wordt voorgesteld dat de bekendmaking van het bestuursreglement, naast de publicatie in de Staatscourant, zal plaatsvinden door publicatie op de website van het Cft BES. Dat laatste is in plaats van publicatie in het afkondigingsblad van de openbare lichamen. Deze afkondigingsbladen zijn bedoeld voor het lokaal bestuur en het is daarbij minder passend deze te gebruiken voor de publicatie van stukken van een orgaan van de Rijksoverheid. Bovendien zorgt publicatie in de Staatscourant in combinatie met elektronische publicatie op de website van het Cft BES voor voldoende zichtbaarheid.

*Artikel II, onderdeel G (artikel 7 van de FinBES)*

De bepalingen in het tweede en derde lid die verband houden met de bancaire functie van het Cft BES, worden geschrapt. Deze functie wordt namelijk belegd bij de Minister van BZK.

*Artikel II, onderdeel H (artikel 8 van de FinBES)*

Het huidige artikel bevat een soort taakverwaarlozingsregeling voor het Cft BES. Een dergelijke regeling is niet passend of nodig bij een adviescollege en kan daarom komen te vervallen.

*Artikel II, onderdeel I (opschrift van Hoofdstuk III)*

Het opschrift wordt verduidelijkt om meer in lijn te zijn met de inhoud van dit hoofdstuk.

*Artikel II, onderdeel J (artikel 9 van de FinBES)*

Dit artikel gaat over het deelnemen in een privaatrechtelijke rechtspersoon door een openbaar lichaam. Zie hierover ook paragraaf 4.6 van het algemeen deel van de toelichting. Het tweede lid van dit artikel wordt aangepast in lijn met Gemeentewet (art. 160, tweede lid). Anders is dat het zogenoemde 'stichting particulier fonds' is opgenomen. Deze rechtsfiguur bestaat namelijk alleen in CN (de artikelen 2:1 en art. 2:50 en volgende van het BW BES). Het besluit tot het oprichten of deelnemen in een privaatrechtelijke rechtspersoon blijft goedkeuring van de Minister van BZK nodig hebben. Wel worden kortere termijnen gesteld voor het geven van de goedkeuring. De termijn voor goedkeuring is in principe 13 weken, eenmaal te verlengen met 13 weken (de artikelen 10:31 van de Algemene wet bestuursrecht (hierna: Awb) j<sup>o</sup>. artikel 217, tweede lid, van de WolBES). De Awb biedt op dit punt regelend recht, waar vanaf kan worden geweken. Er is gekozen voor een kortere termijn om geen onnodige vertraging te veroorzaken voor de openbare lichamen. Als er niet tijdig wordt besloten is er een positieve fictieve beschikking (oftewel, dan wordt de goedkeuring geacht te zijn verleend) (de artikelen 420a en volgende van de Awb j<sup>o</sup>. artikel 10:31, vierde lid, van de Awb j<sup>o</sup>. art. 217, tweede lid, van de WolBES). Voor het besluit over het verlenen van goedkeuring, wint de Minister van BZK advies in bij het Cft BES.

De bepaling over goedkeuring bij vertegenwoordigers van het openbaar lichaam wordt geschrapt omdat dit tot onnodige onduidelijkheid leidt. Ook vervalt de bevoegdheid van de Minister van BZK om aanwijzingen te geven aan de vertegenwoordiger van het bestuurscollege of openbaar lichaam in een privaatrechtelijke rechtspersoon met het oog op de standpuntbepaling in de aandeelhouders- of bestuursvergadering op het terrein van het dividendbeleid, de benoeming, het ontslag en de salarissen van bestuurders. Wel blijft het verbod gehandhaafd voor ambtenaren en politiek ambtsdragers van het openbaar lichaam om zitting te hebben in het bestuur van privaatrechtelijke rechtspersonen waarin het openbaar lichaam deelneemt, ter voorkoming van (de schijn van) belangenverstremgeling. Dit wordt ook uitgebreid met de raad van commissarissen of raad van toezicht. Voorgesteld wordt om bij dit algemene verbod een ontheffingsmogelijkheid toe

te voegen. De ontheffing wordt in een individueel geval verleend, als er geen reële risico's worden gezien op belangenverstremgeling. Deze aanvullende ontheffingsmogelijkheid is er zodat geschikte kandidaten als gevolg van de hoofdregel niet onterecht worden uitgesloten, want dit zijn er al weinig vanwege de kleinschaligheid van de eilanden.

De bepaling betreffende het ter beschikking stellen van de jaarrekeningen aan de toezichthouder is verplaatst naar artikel 11 van de FinBES, aangezien dit verband houdt met de rentelastnorm en de geconsolideerde schuld.

*Artikel II, onderdeel K (artikel 10 van de FinBES)*

Dit artikel gaat over de vervreemding door een openbaar lichaam. Zie hierover ook paragraaf 4.7 van het algemeen deel van de toelichting.

*Artikel II, onderdeel L (artikel 11 van de FinBES)*

Dit artikel heeft betrekking op de rentelastnorm. Zoals ook toegelicht in paragraaf 4.6 van het algemeen deel van de toelichting wordt de term 'collectieve sector' vervangen door 'aangewezen verbonden partijen'. Deze organisaties worden krachtens het tweede lid aangewezen door de Minister van BZK. Daarbij kan het alleen gaan om verbonden partijen, oftewel een *privaatrechtelijke of publiekrechtelijke organisatie waarin het openbaar lichaam een bestuurlijk en een financieel belang heeft*. Ook moet het gaan om organisaties die relevant zijn voor de financiële positie van het openbaar lichaam. Daarbij gaat het specifiek om de vraag of de organisaties meegenomen dienen te worden in de berekening van de geconsolideerde schuld.

In het eerste lid wordt verduidelijkt dat op basis van artikel 89 van de FinBES in bepaalde gevallen wel een lening kan worden verstrekt aan een openbaar lichaam.

Het vierde lid komt voort uit het voormalige negende lid van artikel 9. Het is echter niet noodzakelijk voor het toezicht dat de jaarrekeningen van alle privaatrechtelijke rechtspersonen waarin wordt deelgenomen worden gedeeld met de Minister van BZK. Deze stukken zijn nodig voor de beoordeling van de rentelast en de omvang van de geconsolideerde schuld. Daarom wordt dit beperkt tot de aangewezen verbonden partijen. De termijn voor het aanleveren van de stukken wordt gesteld op acht maanden en komt daarmee overeen met het BW BES. In het geval behoefte is aan uitstel, kan het bestuurscollege hierom verzoeken bij de Minister van BZK.

Het vijfde lid is gebaseerd op het oorspronkelijk artikel 21, derde lid, van de FinBES. Voor zover dit betrekking had op de begroting, is het niet langer nodig dit in de FinBES op te nemen. Dit valt immers binnen het beoordelingskader van de Minister van BZK bij het verlenen van goedkeuring op de begroting of begrotingswijzigingen. Wel zal dit worden opgenomen in het toezichtkader.

*Artikel II, onderdelen M en N (Afdeling 1a en artikel 12 van de FinBES)*

Er wordt voorgesteld de bepalingen betreffende de rekening-courant op te nemen in een aparte, nieuwe afdeling. Op dit moment valt dit nog onder *Afdeling 1 Besluiten met financiële gevolgen*. Aangezien de rekening-courant een financiële faciliteit voor het openbaar lichaam is en niet zozeer een besluit met financiële gevolgen, wordt het passender geacht hier een aparte afdeling voor te creëren. Verder wordt geregeld dat de Minister van BZK verantwoordelijk is voor de rekening-courant in plaats van het Cft BES, omdat deze taak niet past bij een adviescollege. Wel kan het Cft BES op basis van artikel 4 advies geven aan de Minister van BZK.

*Artikel II, onderdeel O (artikel 13 van de FinBES)*

Artikel 13 wordt versimpeld. Zo zal het bepaalde in het tweede lid worden verplaatst naar het BBV BES.

*Artikel II, onderdeel P (artikel 15 van de FinBES)*

In dit artikel wordt nader tot uitdrukking gebracht waaraan een begroting moet voldoen om in evenwicht te zijn. Hiervoor wordt gedeeltelijk aangesloten bij de materiële betekenis van het criterium "structureel en reëel evenwicht", zoals gehanteerd in artikel 189 van de Gemeentewet, omdat het wenselijk wordt geacht waar mogelijk meer aan te sluiten op het Europees Nederlandse systeem. Ook is gekeken naar artikel 15 van de Rijkswet financieel toezicht Curaçao en Sint Maarten.

*Artikel II, onderdeel Q (artikel 16 van de FinBES)*

Voorgesteld wordt artikel 16 te laten vervallen, omdat deze bepaling in de praktijk overbodig is gebleken.

*Artikel II, onderdeel R, S en T (de artikelen 17 tot en met 21 van de FinBES)*

In verband met de wijzigingen in het toezicht op de begroting (zie ook paragraaf 4.5.3.), het bereiken van een meer logische indeling van de FinBES en het nauwer aansluiten op Europees Nederland (specifiek de artikelen 190, 191 en 192 van de Gemeentewet) worden deze bepalingen aangepast.

De voorgestelde artikelen 17 en 18 zien op de normale vaststelling van de begroting, of begrotingswijzigingen, als sprake is van het lichte niveau. Dit betekent dat er geen verplicht advies van het Cft BES gevraagd hoeft te worden. Verder wordt, in verband met het vervallen van artikel 13, derde lid, onder b, van de FinBES, geregeld dat de meerjarenraming meegestuurd dient te worden met de begroting. De vastgestelde begroting dient vóór 15 november aan de Minister van BZK en het Cft BES te worden gestuurd ten behoeve van het begrotingstoezicht.

De artikelen 19 en 21 komen hier te vervallen. In plaats daarvan wordt aan het einde van deze afdeling een paragraaf opgenomen betreffende het toezicht op de begrotingscyclus. Artikel 20 komt volledig te vervallen, aangezien het niet langer passend wordt geacht dat vanuit de nationale overheid een begroting zou kunnen worden vastgesteld voor een decentrale overheid (behoudens een situatie van grove taakverwaarlozing, als bedoeld in artikel 132, vijfde lid, van de Grondwet). Het blijft dus aan de eilandsraad om de begroting vast te stellen, ook als dit te laat gebeurt. Wel zou het feit dat er geen begroting is voor 1 januari van het begrotingsjaar betekenen dat toestemming nodig is voor het aangaan van verplichtingen (art 32e).

*Artikel II, onderdeel U (artikel 22 van de FinBES)*

Zoals ook is toegelicht in paragraaf 4.3.1. wordt de uitvoeringsrapportage vervangen door de bestuursrapportage. Deze rapportage wordt primair toegezonden aan de eilandsraad. Wel zal een afschrift worden gezonden aan de toezichthouder.

In beginsel ziet de bestuursrapportage op de eerste vier maanden en de tweede vier maanden van het jaar. Wat betreft de derde periode wordt onder het lichte toezicht op de begroting geen aparte rapportage gevraagd, omdat dit dubbelop zou zijn met de jaarrekening die in dezelfde periode wordt gemaakt. In geval er sprake is van gematigd of zwaar toezicht op de begroting is deze derde rapportage wel verplicht (zie het voorgestelde artikel 32j van de FinBES). Als de eilandsraad behoefte heeft om vaker een bestuursrapportage te ontvangen, kan hij een hogere frequentie vaststellen. Dit kan echter niet minder vaak zijn dan is verplicht op basis van artikel 22, eerste lid en artikel 32j.

Ten aanzien van de inhoud van bestuursrapportage zal de Minister van BZK bij ministeriële regeling nadere regels stellen. Dit geeft een grotere mate van flexibiliteit. Het Cft BES kan de toezichthouder, gevraagd en ongevraagd, adviseren over de inhoud van de bestuursrapportages.

*Artikel II, onderdeel V (de artikelen 23 tot en met 26 van de FinBES)*

Deze artikelen komen hier te vervallen. Het eerste en derde lid van artikel 23 worden geschrapt om te harmoniseren met de Gemeentewet en het niet noodzakelijk is dit expliciet te regelen. Dit neemt uiteraard niet weg dat geen uitgaven kunnen worden gedaan die niet zijn opgenomen in de begroting en dat als men wel een dergelijke uitgave wil doen, daarvoor een begrotingswijziging moet worden ingediend. Verder vervalt de formele taak van het Hoofd financiën (zie ook paragraaf 4.4). In plaats daarvan wordt voorgesteld dat de openbare lichamen zelf nadere regels stellen over de wijze waarop verplichtingen worden aangegaan en privaatrechtelijke rechtshandelingen namens het openbaar lichaam worden verricht (artikel 34).

De overige bepalingen betreffen toezicht en worden daarom verplaatst naar paragraaf 4 Financieel toezicht op de begrotingscyclus.

*Artikel II, onderdeel W (artikel 31 van de FinBES)*

Het tweede lid vervalt omdat de informatiepositie van het Cft BES wordt geregeld in artikel 8, en deze bepaling dus overbodig is. Het derde lid vervalt omdat dit niet langer nodig is onder het nieuw voorgestelde model voor toezicht op de begrotingscyclus.

*Artikel II, onderdeel X (Hoofdstuk II, afdeling 2, paragraaf 4, van de FinBES)*

Deze nieuwe paragraaf bevat de bepalingen met betrekking tot het gematigde en zware niveau voor begrotingstoezicht (zie ook paragraaf 4.5.3). De bepalingen zijn gedeeltelijk in lijn met artikel 203 en volgende in de Gemeentewet, omdat is beoogd verder aan te sluiten op Europees Nederland. Tegelijkertijd is er sprake van een bijzonder systeem van getrappt toezicht. Bij gematigd toezicht geldt een goedkeuringsplicht van de begroting, een plicht advies in te winnen bij het Cft BES voor de volgende begroting (swijzigingen), en een frequentie van ten minste drie bestuursrapportages per jaar.

*Artikel 32a:* Deze bepaling heeft betrekking op het instellen van het gematigde begrotingstoezicht en de goedkeuring van de begroting. Dit vertoont sterke parallellen met het preventief toezicht op de gemeentebegroting.<sup>117</sup> Bij het gematigde toezichtniveau geldt een goedkeuringsplicht van de begroting. Bij het lichte niveau is geen goedkeuring aan de orde.

Het gematigde niveau wordt ingesteld als de begroting naar het oordeel van de Minister van BZK niet in evenwicht is. Wanneer de begroting in evenwicht kan worden geacht, is nader geduid in artikel 15, tweede lid. Daarbij heeft de Minister op grond van het tweede lid een discretionaire bevoegdheid om te besluiten niet over te gaan op het gematigde niveau, indien aannemelijk is dat in de eerstvolgende jaren een evenwicht tot stand zal worden gebracht. Dit moet blijken uit de meerjarenraming. De Minister heeft hierover de beoordelingsbevoegdheid. Daarnaast kán gematigd toezicht worden ingesteld als de begroting of de jaarrekening te laat is. Het oordeel hierover is aan de Minister van BZK.

Het besluit om over te gaan tot het gematigde niveau wordt genomen op basis van de begroting die gelet op artikel 17, vijfde lid, van de FinBES moet worden verzonden aan de Minister van BZK en het Cft BES.

In het vierde lid wordt geregeld dat het Cft BES bij de beoordeling van de begroting door de Minister van BZK een adviserende rol heeft. Het Cft BES geeft de Minister van BZK zijn bevindingen over de begroting, waarbij in elk geval betrokken zal worden of de begroting in evenwicht is. Daarbij geeft het Cft BES ook een advies over het al dan niet instellen van het gematigde begrotingstoezicht door de Minister van BZK. Voor dit advies geldt een termijn van twee weken. Dat betekent dat het advies uiterlijk 27 november moet worden uitgebracht als de vastgestelde begroting door het openbaar lichaam is toegezonden op 14 november, de uiterste datum hiervoor gelet op artikel 17, vijfde lid, van de FinBES.

Indien een besluit tot het instellen van een goedkeuringsverplichting wordt genomen, geldt dit voor deze begroting, de wijzigingen van die begroting en de daarop volgende begroting. De reden dat de goedkeuring ook voor de volgende begroting geldt, is dat dit meer rust biedt in het geval het gematigde niveau langere tijd zal gelden. In het geval dat de volgende begroting wel voldoet aan de eisen gesteld in het eerste lid, zal het gematigde niveau vanzelf teruggaan naar het lichte niveau. De Minister van BZK kan de goedkeuringsverplichting ook tussendoor intrekken indien het niet langer nodig lijkt om het gematigde toezichtniveau vol te houden (vierde lid). Voor de Minister hiertoe besluit, dient deze advies te vragen aan het Cft over de wenselijkheid van een dergelijk besluit. Hiervoor stelt de Minister van BZK een redelijke termijn.

*Artikel 32b:* Omdat voor derden belangrijk is om te weten in hoeverre er sprake is van toezicht, en met name of de begroting geldig is zonder goedkeuring, wordt in dit artikel geregeld dat het besluit tot het instellen van de goedkeuringsverplichting moet worden gepubliceerd door de Minister van BZK.

*Artikel 32c:* Deze bepalingen volgen uit artikel 19, eerste lid, tweede volzin, en derde lid.

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<sup>117</sup> Hoofdstuk XIII, paragraaf 3, van de Gemeentewet.

*Artikel 32d:* Deze bepaling stelt nadere regels voor de termijnen in verband de goedkeuring.

*Artikel 32e tot en met g:* Dit regelt wat er gebeurt als de begroting niet tijdig is vastgesteld en niet is goedgekeurd. Dit is het zware toezichtniveau. Deze bepalingen zijn gebaseerd op de huidige artikelen 24 tot en met 26 van de FinBES en zijn vergelijkbaar met de artikelen 208 tot en met 210 van de Gemeentewet.

Daarnaast is het onder het preventieve toezichtmodel mogelijk dat er bij dringende spoed een onvoorziene verplichting moet worden aangegaan, waarvoor een wijziging van de begroting nodig is, maar deze wijziging niet tijdig kan worden goedgekeurd. In dat geval kan de regeling in artikel 32f worden toegepast.

*Artikel 32h:* In het geval van gematigd of zwaar toezicht op de begroting zal ook de adviesverplichting gelden. Dit was aanvankelijk geregeld in artikel 17 van de FinBES, als standaard onderdeel van het begrotingsproces. Doordat de adviesverplichting niet langer geldt in het lichte niveau wordt beoogd de bestuurlijke lasten te beperken. De adviesverplichting ziet op de ontwerpbegroting. Dit betekent dat het begrotingsproces langer zal duren, maar de adviesverplichting zal ook bijdragen aan de kwaliteit van de begroting en hopelijk aan het bevorderen dat het openbaar lichaam zo snel mogelijk kan terugkeren naar het lichte toezichtniveau.

Deze adviesverplichting zal uiteraard niet gelden voor de begroting die reeds is vastgesteld door de eilandsraad en op basis waarvan is bepaald dat het verzwaarde toezichtniveau moet worden ingesteld, omdat de procedure rondom die begroting dan al de fase ruim voorbij is waarin het voorafgaande advies zou worden gegeven.

*Artikel 32i:* Dit artikel is gebaseerd op artikel 211 van de Gemeentewet en zorgt voor nadere informatievoorziening aan de toezichthouder.

*Artikel 32j:* Zie ook de toelichting bij Artikel II, onderdeel U (artikel 22 van de FinBES).

*Artikel II, onderdeel Y (hoofdstuk III, afdeling 3, paragraaf 1 van de FinBES)*

Om de toegankelijkheid van de wet te vergroten en omdat er enkele artikelen worden toegevoegd die specifiek zien op het bestuurlijk toezicht op het financiële beheer, wordt voorgesteld om hoofdstuk III, afdeling 3 te verdelen in paragrafen. Onder *paragraaf 1 Algemene bepalingen* zullen de artikelen 33 (vervalt) tot en met 38 vallen. Artikel II, onderdeel FF, van dit wetsvoorstel bevat de tweede paragraafaanduiding.

*Artikel II, onderdeel Z (artikel 33 van de FinBES)*

Artikel 33 betreft het toezicht op het implementeren en uitvoeren van voorzieningen in verband met beleidsmaatregelen die gevolgen hebben voor de begroting worden hier geschrapt. Gelet op de wijzigingen van het toezicht op het financiële beheer kunnen deze bepalingen komen te vervallen.

*Artikel II, onderdeel AA (artikel 34 van de FinBES)*

Artikel 34 wordt gedeeltelijk aangepast in lijn met artikel 212 van de Gemeentewet. Dit betekent ten opzichte van het huidige artikel dat de eilandsraad ook de uitgangspunten voor het financiële beheer en het financiële beleid dient op te nemen in de financiële eilandsverordening. Ook wordt expliciet gemaakt dat de eilandsverordening regels dient te bevatten over activa, de grondslagen voor de berekening van de prijzen en van tarieven in verband met gebruik van bepaalde bezittingen, werken en inrichtingen.

Aanvullend op hetgeen is geregeld in de Gemeentewet, wordt voorgesteld dat de eis van doelmatigheid een verplicht element blijft in de verordening. Het belang van doelmatige financiën blijft immers onverminderd gelden en het wordt van belang geacht dat de eilandsraad hiervoor kaders vaststelt.

Verder dienen in de verordening regels te worden opgenomen het verrichten van privaatrechtelijke rechtshandelingen namens het openbaar lichaam en over het aangaan van financiële verplichtingen. Dit in plaats van de bepalingen die nu dwingend zijn opgenomen in de artikelen 23 en 35 van de FinBES. Door middel van deze verordening en de mede daaruit voortvloeiende dan wel samenhangende volmacht- en mandaatverlening met toepassing van voldoende functiescheiding, wordt in beginsel gewaarborgd dat wordt voldaan aan de eisen van rechtmatigheid, doelmatigheid, verantwoording en controle.

Om verder te verzekeren dat de processen goed lopen, ondanks het vervallen van de wettelijke bepalingen met betrekking tot het hoofd financiën, wordt voorgesteld dat de verordening of wijziging daarvan toetsing en goedkeuring door de Minister van BZK vergt. Bij de toetsing zal onder meer worden gekeken of er sprake is van voldoende functiescheiding, of de bevoegdheden passen bij de aard van de functie en of gedelegeerde bevoegdheden op voldoende hoog niveau in de organisatie zijn belegd.

Het gaat bij al deze onderwerpen om vastlegging van de beleidsmatige uitgangspunten en kaders. Deze geven de grenzen aan waarbinnen het college dient te opereren. Daarnaast hebben de bedoelde regels en grondslagen budgettaire en financiële gevolgen.

Verder worden er een aantal aanpassingen voorgesteld in verband met het toezicht op het financiële beheer. Voor deze verordening is goedkeuring nodig. Zie hierover ook paragraaf 4.4 en 4.5 van het algemeen deel van de toelichting.

#### *Artikel II, onderdeel BB (artikel 35 van de FinBES)*

De bepalingen van dit artikel komen te vervallen. Dit heeft te maken met de keuze om het hoofd Financiën geen taken op het niveau van de wet toe te kennen en de keuze om het financieel toezicht te versimpelen waarbij meer wordt uitgegaan van vertrouwen. Wel wordt de eilandsraad geacht regels te stellen bij de financiële verordening. Zie hierover ook paragraaf 4.4 en 4.5.4 van het algemeen deel van de toelichting.

De bepalingen betreffende het toezicht op het financiële beheer worden opgenomen in artikel 38a en 38b.

#### *Artikel II, onderdeel CC (artikel 36 van de FinBES)*

De eerste drie leden van dit artikel komen te vervallen. Dit heeft te maken met de keuze om het hoofd Financiën geen taken op het niveau van de wet toe te kennen. Zie hierover ook paragraaf 4.4 van het algemeen deel van de toelichting. Daarnaast is dit artikel aangepast om de formulering te verhelderen, de administratieve verplichtingen te verlichten en het herbeleggen van bepaalde taken van het Cft BES bij de Minister van BZK als toezichthouder.

*Eerste lid en tweede:* Deze leden corresponderen met het huidige vierde en vijfde lid. Met de aanpassing van het eerste lid is geen materiële wijziging beoogd. Het uitgangspunt blijft dat gebruik wordt gemaakt van het bancaire betalingssysteem. In het tweede lid wordt nu geregeld dat de Minister van BZK voorwaarden kan stellen in plaats van het Cft BES, omdat deze toezichtsbevoegdheid dient te liggen bij de toezichthouder.

*Vierde lid:* Dit lid correspondeert met het huidige achtste lid. Voor het gebruik van bankpassen, chippassen en andere elektronische betaalwijzen vervallen de wettelijke verplichtingen. Deze hingen samen met de borging van de functiescheiding binnen het openbaar lichaam en worden niet langer noodzakelijk geacht. Voor creditcards blijft de bepaling in verband met de samenhang met de rentelastnorm wel gelden. Deze bepaling wordt wel aangepast om te verduidelijken dat het gebruik in principe wel is toegestaan, maar wel onder het stellen van bepaalde voorwaarden door de Minister van BZK.

*Achtste lid:* Met de tekstuele wijzigingen is geen materiële wijziging van deze bepaling beoogd, anders dan het herbeleggen van de taak van het Cft BES bij de Minister van BZK.

#### *Artikel II, onderdeel DD (artikel 37 van de FinBES)*

In dit artikel wordt de rol van het Cft BES vervangen door de Minister van BZK en wordt de term 'Euro Overnight Index Average' vervangen door 'Euro short term rate'. Dit laatste heeft ermee te maken dat de eerdere term verouderd was.

#### *Artikel II, onderdeel EE (artikel 38 van de FinBES)*

Het huidige tweede lid kan komen te vervallen omdat de eilandsverordening sowieso bekend gemaakt dient te worden. Een aparte toezending aan het Cft BES is daarom niet nodig. Voorts zijn er nog enkele ondergeschikte wijzigingen in verband met het verder implementeren van de wijzigingen zoals ook zijn doorgevoerd voor gemeenten in de Wet versterking decentrale rekenkamers (zie ook paragraaf 3.4.2. van het algemeen deel van de toelichting). In afwijking van hetgeen voorgesteld in die wet, blijven de bevindingen over onrechtmatigheden in de



jaarrekening onderdeel van het verslag van de accountant. Voor Europees Nederland wordt voorgesteld dat de decentrale overheden hier zelf over dienen te rapporteren. Dit zou aanvullende capaciteit vragen van de openbare lichamen, wat op dit moment voorbarig wordt geacht. Het is wel goed denkbaar dat deze wijziging op termijn wel zal worden doorgevoerd voor Caribisch Nederland.

*Artikel II, onderdeel FF (de artikelen 38a en 38b van de FinBES)*

Deze nieuwe paragraaf bevat de bepalingen over het bestuurlijk financieel toezicht op het gebied van het financiële beheer. Zie hierover ook paragraaf 4.5.4 van het algemeen deel van de toelichting. De artikelen 38a en 38b zijn van toepassing als er sprake is van verzwaaard toezicht. In het lichte toezichtniveau wordt geen instrumentarium ingezet door de toezichthouder en is er geen noodzaak tot wettelijke bepalingen.

*Artikel 38a:* Dit artikel regelt het verbeterplan, oftewel het gematigde toezichtniveau. In het eerste lid wordt geregeld dat de Minister van BZK, in diens hoedanigheid als toezichthouder, het bestuurscollege kan opdragen om een verbeterplan op te stellen ten behoeve van de verbetering van het financiële beheer. Dit is het gematigde niveau. Het verplichte verbeterplan kan aan de orde zijn als:

- de accountantsverklaring niet goedkeurend is,
- het rapport van bevindingen van de accountant hoog risicobevindingen bevat; of
- de wettelijke documenten uit de begrotingscyclus niet tijdig zijn. Daarbij gaat het specifiek om:
  - het voorleggen van de ontwerpbegroting ter advies, ingeval van verzwaaard begrotingstoezicht (artikel 32h, tweede lid).
  - het aanbieden van het ontwerp van de begroting aan de eilandsraad (artikel 17, eerste lid),
  - het verzenden van de vastgestelde begroting aan de Minister van BZK (artikel 17, vijfde lid),
  - het verzenden van de vastgestelde begrotingswijzigingen aan de Minister van BZK (artikel 18 j°. artikel 17, vijfde lid),
  - het vaststellen van de bestuursrapportages (artikel 22, eerste en tweede lid),
  - het verzenden van de vastgestelde jaarrekening en het jaarverslag, vergezeld van de overige in artikel 28 bedoelde stukken, aan de Minister van BZK (artikel 31, eerste lid),

Verder moet de Minister van BZK het bestuurscollege horen en schriftelijke advies vragen van het Cft BES voor besloten kan worden dat er een verbeterplan moet worden vastgesteld. Dit zorgt ervoor dat deze verplichting niet lichtvaardig wordt opgelegd, maar enkel als dit doelmatig en noodzakelijk is. Daarnaast kan het Cft BES op basis van artikel 4 van de FinBES ongevraagd aan de Minister van BZK adviseren dat het instellen van verzwaaard toezicht wenselijk zou kunnen zijn. Het verbeterplan ziet op de verbetering van het financiële beheer van het openbaar lichaam. De exacte inhoud van een concreet verbeterplan zal afhangen van de aard van de problemen. Om hiervoor het benodigde maatwerk mogelijk te maken is in het tweede lid opgenomen dat de Minister van BZK nader kan invullen waarop het verbeterplan betrekking heeft. Daarbij ligt voor de hand dat het verbeterplan is gericht op de constatering en eventuele adviezen in het rapport van bevindingen van de accountant.

Het verbeterplan moet binnen acht weken worden opgesteld en ter kennis worden gesteld aan de Minister van BZK, het Cft BES en de eilandsraad.

Het vierde lid regelt de rapportage over de voortgang. Deze rapportage kan eventueel worden gebundeld met de bestuursrapportage. Deze rapportage vindt in beginsel eens per zes maanden plaats, maar de Minister van BZK kan in afwijking daarvan een afwijkende frequentie vaststellen. Dit maakt maatwerk mogelijk.

*Artikel 38b:* Naast het verbeterplan kan ook een onderzoek naar het financiële beheer worden ingesteld. Dit was in het algemeen geregeld in artikel 34 van de FinBES, maar wordt aangepast op het getrapte toezichtniveau.

Voorgesteld wordt dat dit zware niveau pas aan de orde is in het geval er sprake is van ernstige zorgen over het financiële beheer, omdat in grote mate niet wordt voldaan aan de criteria voor het lichte niveau. Het onderzoek kan in de praktijk worden uitgevoerd door het Cft BES. Dit kan

gebeuren als wordt voldaan aan de criteria voor het verplichten van een verbeterplan én er sprake is van ernstige zorgen over het financiële beheer.

Op basis van dat onderzoek kunnen nadere afspraken worden gemaakt tussen de Minister van BZK en het bestuurscollege. Het Cft BES zal hierbij een adviserende rol hebben. Daarbij heeft de Minister van BZK ook de bevoegdheid om aanwijzingen te geven.

Overigens wordt opgemerkt dat het huidige artikel 34 een bredere grondslag voor de in artikel 38b opgenomen bevoegdheden bevat. Gelet op deze bepaling kan het Cft BES op elk moment een onderzoek instellen en kan dit onderzoek zowel zien op de inrichting van de financiële organisatie als op het financiële beheer. Vanuit het uitgangspunt van vertrouwen wordt ervoor gekozen deze bredere grondslag te laten vervallen en deze te vervangen door de beperktere grondslag, zoals voorgesteld in artikel 38b.

#### *Artikel II, onderdeel GG (artikel 39 van de FinBES)*

Dit artikel ziet op de plicht voor het bestuurscollege om te faciliteren dat de Minister van BZK en het Cft BES de benodigde informatie tot hun beschikking hebben. Dit blijft grotendeels ongewijzigd. Wel wordt er, in lijn met de uitgangspunten van dit wetsvoorstel, vanuit gegaan dat meer terughoudend zal worden omgegaan met deze mogelijkheden om informatie te verkrijgen. In verband hiermee wordt in het tweede lid verduidelijkt dat het Cft BES enkel toegang of inzage hoeft te krijgen voor zover dat relevant is voor de uitoefening van zijn taken. Deze clausulering gold al voor het verstrekken van inlichtingen, zoals geregeld in het eerste lid. De toepassing van het eerste en tweede lid in de praktijk zal verder worden uitgewerkt in financieel toezichtkader. Verder wordt voorgesteld het derde lid te laten vervallen. Daarin is geregeld dat de Minister aanwijzingen kan geven aan de collectieve sector of het verstrekken van gegevens. Een dergelijke bevoegdheid wordt minder passend geacht in de publiek-private verhoudingen en komt dus te vervallen. De informatieverstrekking van aangewezen verbonden partijen zal verlopen via het openbaar lichaam.

#### *Artikel II, onderdelen HH tot en met SS en UU (opschriften Afdelingen Hoofdstuk IV en V en artikelen 42, 65 tot en met 67 en 86)*

Om de benaming van de verschillende onderdelen van de wet te uniformeren wordt voorgesteld de aanduiding 'paragraaf' in dit hoofdstuk telkens te vervangen door 'afdeling'. Dit leidt ook tot een aantal redactionele wijzigingen van artikelen, waar deze onderdelen van de wet worden aangehaald. Overigens wordt hierbij opgemerkt dat dit ook leidt tot een redactionele wijziging van artikel 7, vijfde lid, van de Paspoortwet. Aangezien dit een Rijkswet is, zal dit worden verwerkt in een apart wetstraject.

#### *Artikel II, onderdeel TT (artikel 93 van de FinBES)*

Met dit voorstel wordt een vaste regeling opgenomen over de verantwoording betreffende bijzondere uitkeringen. Dit wordt aangepast om meer duidelijkheid te bieden en is gebaseerd op de systematiek voor specifieke uitkeringen in de Fvw. Wel zijn er enige voorstellen om de regeling simpeler te maken en beter te laten aansluiten bij de praktijk van de openbare lichamen. Wat wel anders is, is dat deze systematiek als hoofdregel geldt voor de bijzondere uitkeringen, maar dat er een uitzondering geldt voor kleine en grote bijzondere uitkeringen, waarvoor een apart niveau gehanteerd kan worden. Zie voor een nadere toelichting het algemeen deel van de toelichting onder paragraaf 4.3.1 Begrotingscyclus. In verband met deze mogelijkheid tot maatwerk kan het artikel ook eenvoudiger zijn.

Verder worden de sanctiemogelijkheden van artikel 17b van de Fvw niet opgenomen, omdat dit niet nodig wordt geacht gelet op het verdere financieel toezicht op de openbare lichamen.

#### *Artikel II, onderdeel VV (artikel 99 van de FinBES)*

Dit artikel bevat overgangsrecht met betrekking tot de begrotingscyclus. Voor de begrotingsjaren voorafgaande aan inwerkingtreding van dit wetsvoorstel blijven de huidige regels van toepassing. Hiermee houdt ook verband dat deze onderdelen van het wetsvoorstel in werking zullen treden op een 1 januari.

### **De artikelen IV, VI, XVI en XVIII (Gemeentewet, Provinciewet, Comptabiliteitswet 2016 en Waterschapswet)**

In paragraaf 3.4.2 is toegelicht dat, gelet op 'comply or explain', de wijzigingen voor Europees Nederland die voortvloeien uit de Wet versterking decentrale rekenkamers worden meegenomen in dit wetsvoorstel. Daardoor worden ook de onderzoeksbevoegdheden van de rekenkamers van de openbare lichamen uitgebreid. Eén van de nieuwe onderzoeksbevoegdheden in de Wet versterking decentrale rekenkamers is het door de lokale rekenkamer of de Algemene Rekenkamer instellen van onderzoek bij privaatrechtelijke rechtspersonen waarin meerdere overheidslagen een gezamenlijk meerderheidsbelang hebben. Het betreft hier alleen gemeenten, provincies, waterschappen en/of de Staat die een aandelenkapitaal van meer dan 50% houden. In de WolBES (artikel 185, eerste lid, onderdeel c), Gemeentewet (artikel 184, eerste lid, onderdeel c), Provinciewet (artikel 185, eerste lid, onderdeel c) en de Waterschapswet (artikel 97c, eerste lid, onderdeel c) wordt met het wetsvoorstel mogelijk gemaakt dat lokale rekenkamers in Europees en Caribisch Nederland ook een onderzoek kunnen instellen naar privaatrechtelijke rechtspersonen waarin met de openbare lichamen meer dan 50% van het aandelenkapitaal wordt gehouden. Deze bevoegdheid wordt door wijziging van artikel 7.24, onderdeel f, van de Comptabiliteitswet 2016 tevens geregeld voor de Algemene Rekenkamer. Indien de lokale rekenkamers of de Algemene Rekenkamer voornemens zijn een onderzoek in te stellen naar een privaatrechtelijke rechtspersoon waarin een openbaar lichaam samen met de Staat, gemeente(n), provincie(s) of waterschap(pen) een meerderheidsbelang heeft, dient het bestuurscollege daarvan in kennis te worden gesteld (artikelen 185, vijfde lid, van de WolBES, 184, vijfde lid, van de Gemeentewet, 185, vijfde lid, van de Provinciewet, 97c, vijfde lid, van de Waterschapswet en 7.35, derde lid, van de Comptabiliteitswet 2016).

### **De artikelen V en XIX (Invoeringswet openbare lichamen Bonaire, Sint Eustatius en Saba en de Coördinatiewet uitzonderingstoestanden)**

In artikel 9b, tweede lid, onder b, van de Coördinatiewet uitzonderingstoestanden (hierna: Cwu) worden de bepalingen op de lijsten A en B van de Cwu van overeenkomstige toepassing verklaard in de openbare lichamen. Artikel 14, onder b, van de Invoeringswet openbare lichamen Bonaire, Sint Eustatius en Saba (hierna: Invoeringswet) regelt dat de bepalingen op lijst A bij de Cwu op de openbare lichamen separaat in werking kunnen worden gesteld.

Indien een bepaling van lijst A of B op de openbare lichamen wordt toegepast, wordt daar waar 'Commissaris van de Koning' of 'Commissaris in de provincie' staat, gelezen 'Rv'. Dit is geregeld in artikel 9b, tweede lid, van de Cwu en artikel 14, onder b, van de Invoeringswet. Met het vervallen van de Rv is het noodzakelijk deze artikelen te wijzigen, zodat de koppeling met de commissaris van de Koning/in de provincie verdwijnt. Duidelijkheidshalve is in deze artikelen verder uitdrukkelijk opgenomen dat de commissaris van de Koning, waaronder tevens wordt verstaan de commissaris in de provincie, diens noodbevoegdheden niet kan uitoefenen op de openbare lichamen.

Als gevolg van het vervallen van de functie van Rv worden ook de artikelen 9d van de Cwu en 17 van de Invoeringswet gewijzigd. Daardoor kan de minister die het aangaat niet langer aan de Rv, maar nog wel aan de gezaghebber mandaat verlenen om bevoegdheden die op grond van de bepalingen op de lijsten A en B bij de Cwu die in werking zijn gesteld, namens die minister uit te oefenen.

#### *Doorwerking in andere noodbepalingen*

De voorgestelde wijzigingen van artikel 9b, eerste lid, onder b, van de Cwu en artikel 14, onder b, van de Invoeringswet hebben gevolgen voor de Oorlogswet voor Nederland, de Wet buitengewone bevoegdheden burgerlijk gezag en de Wet verplaatsing bevolking. Bij toepassing van (artikelen uit) deze wetten worden de daarin genoemde taken en bevoegdheden van de commissaris van de Koning op de openbare lichamen immers uitgeoefend door de Rv. Met de hierboven voorgestelde

wijziging van de artikelen 9b, eerste lid, onder b, van de Cwu en 14, onder b, van de Invoeringswet verdwijnt deze mogelijkheid.

Voor de Oorlogswet voor Nederland heeft het vervallen van de functie van Rv gevolgen voor de artikelen 14, 29, eerste lid, en 30. Dat betekent dat alleen de bevoegdheden van de gezaghebber resterend. Concreet betekent dit dat de gezaghebber een verzoek om bijstand ter handhaving van de openbare orde en veiligheid aan de Minister van Defensie kan blijven doen (artikel 14) en kan het militair gezag in de noodtoestand bevoegdheden van de gezaghebber naar zich toetrekken (artikelen 29, eerste lid, en 30).

Voor de Wet buitengewone bevoegdheden burgerlijk gezag heeft het vervallen van de functie van de Rv gevolgen voor de taken en bevoegdheden genoemd in de artikelen 5, eerste en vierde lid, 6, eerste tot en met derde lid, 7, eerste lid, 8, eerste lid, 9, eerste lid, en 18, eerste lid. Dat leidt niet tot problemen. In deze bepalingen behouden de gezaghebber en de Minister van Justitie en Veiligheid de mogelijkheid om de betreffende bevoegdheden uit te oefenen op de openbare lichamen. Gelet op de artikelen 9d van de Cwu en 17 van de Invoeringswet kan Onze Minister die het aangaat bovendien mandaat verlenen aan de gezaghebber tot het uitoefenen van de bevoegdheden die zijn opgenomen in de in werking gestelde noodbepalingen.

Voor de Wet verplaatsing bevolking heeft het vervallen van de functie van Rv gevolgen voor de artikelen 2b en 3, eerste lid. De bevoegdheden die zijn opgenomen in deze artikelen worden uitgeoefend door de gezaghebber, dan wel de Minister van Justitie en Veiligheid. Gelet op de artikelen 9d van de Cwu en 17 van de Invoeringswet kan de minister die het aangaat ook in dit geval mandaat verlenen.

#### **Artikel IX (Wet gemeenschappelijke regelingen)**

Vanwege het ontbreken van een regionale, overkoepelende bestuurslaag op de openbare lichamen met het vervallen van de Rv, worden diens taken in artikelen 126 en 129 van de Wgr neergelegd bij de Minister van BZK. Verder wordt in artikel 135, tweede lid, een verwijzing naar de FinBES aangepast.

#### **Artikel X (Wet herstel voorzieningen Sint Eustatius)**

In artikel 21, eerste lid, van de Wet herstel voorzieningen Sint Eustatius staat dat deze wet vervalt op 1 september 2024. Dit wetsvoorstel zal vermoedelijk niet eerder dan per 1 juli 2024 in werking treden. Aangezien het openbaar lichaam Sint Eustatius zich naar verwachting tegen die tijd in de laatste fase van herstel van voorzieningen bevindt, wordt het niet nodig geacht de wet te laten voortduren tot de vervaldatum. Daarom zal met de inwerkingtreding van dit wetsvoorstel de Wet herstel voorziening Sint Eustatius vervallen.

#### **Artikel XII (Wet maatregelen huurwoningmarkt Caribisch Nederland)**

In artikel 1.6, tweede lid, van de Wet maatregelen huurwoningmarkt Caribisch Nederland wordt geregeld dat in plaats van de Rv, het besluit tot de benoeming, schorsing en ontslag van de voorzitter, plaatsvervangend voorzitter, secretaris en plaatsvervangend secretaris van de huurcommissie, voortaan de goedkeuring behoeft van de Minister van BZK. De reden hiervoor is dat de taak bovenlokale en coördinerende elementen bevat die enkel bij de Minister van BZK kunnen worden belegd. Daarnaast sluit dit aan op het Europees Nederlandse stelsel waar volgens artikel 3b, eerste lid, van de Uitvoeringswet huurprijzen woonruimte de leden van de huurcommissie tevens door de Minister van BZK worden benoemd.

### **Artikel XV (Wet op de Kamers van Koophandel en Nijverheid BES)**

In artikel 22, vijfde lid, van de Wet op de Kamers van Koophandel en Nijverheid BES wordt de taak van de Rv herbelegd bij de gezaghebber. Daardoor kan de gezaghebber bij ernstig nalaten namens het bestuur van de Kamers voorzien. Concreet biedt dat de gezaghebber de bevoegdheid om de nodige gelden uit de kas van de Kamer te putten, over diensten van de secretaris van de Kamer te beschikken, personeel toe te wijzen of te ontslaan en in diens vervanging te voorzien.

### **Artikel XVII (Havenbeveiligingswet BES)**

In artikel 7, tweede lid, wordt de bevoegdheid van de Rv om de beveiligingsniveau waarop de havenfaciliteit functioneert op de openbare lichamen te wijzigen, belegd bij de Minister van Justitie en Veiligheid in overleg met de Minister van BZK, tenzij sprake is van spoed. De herbelegging van deze bevoegdheid komt nu overeen met de situatie in Europees Nederland. Zie hiervoor ook artikel 12, tweede lid, van de Havenbeveiligingswet.

### **Artikel XX (Uitvoeringswet van het tussen Nederland en Groot-Brittannië gesloten verdrag, houdende bepalingen tot het vergemakkelijken van het voeren van rechtsgedingen BES)**

De taak van de Rv in artikel 2 wordt belegd bij de Minister van Justitie en Veiligheid die, indien nodig, na overleg met de Minister van Buitenlandse Zaken een besluit kan nemen zoals bedoeld in dit artikel. Daarmee wordt aangesloten op het Europees deel van Nederland. Zie daarvoor ook artikel 2 van de Wet uitvoering rechtsvorderingsverdrag Groot-Brittannië.

### **Artikel XXI (Wetboek van Burgerlijke Rechtsvordering BES)**

#### *Onderdeel A*

Met het vervallen van de Rv in artikel 5, onder 1°, kan diegene ook niet langer in diens worden gedagvaard. Daarnaast vindt het dagvaarden van de openbare lichamen (Bonaire, Sint Eustatius en Saba) op dezelfde wijze plaatsvindt als waarop de landen en de Staat der Nederlanden wordt gedagvaard, te weten door betekening van het exploit van dagvaarding aan het parket van de procureur-generaal. Aldaar wordt het exploit dan naar het verantwoordelijk orgaan doorgeleid.

#### *Onderdeel B*

De situatie waarop artikel 39 ziet, heeft zich in het verleden niet voorgedaan en de verwachting is dat dit in de toekomst ook niet het geval zal zijn. Mocht zich toch de situatie voordien waarin artikel 39 voorziet – het geval dat in het Caribisch deel van Nederland geen of onvoldoende onpartijdige rechters beschikbaar zijn om een geschil aldaar te behandelen en een van de partijen om vervanging van de rechter(s) vraagt – dan kan in voorkomende gevallen het Gemeenschappelijk Hof van Justitie aanwijzingen geven voor de toedeling van de zaak of kan advies aan de Procureur-Generaal van de Hoge Raad worden gevraagd. Met andere woorden, de situatie waarin artikel 39 voorziet, kan in voorkomende gevallen worden opgelost binnen het rechterlijk domein.

### **De artikelen XXIII en XXIV (Wet primair onderwijs BES en Wet voortgezet onderwijs 2020)**

In de betreffende bepalingen wordt de Rv vervangen door de Minister van Onderwijs, Cultuur en Wetenschap. In de praktijk zal dit de Minister voor Primair en Voortgezet Onderwijs zijn, aangezien de bevoegdheden die worden toegekend, vallen binnen diens portefeuille.

### **Artikel XXV (Arbeidsgeschillenwet 1946 BES)**

In deze wet wordt de Rv vervangen door de gezaghebber vanwege diens onafhankelijke rol in het sociaal en sociaal economisch domein. Met de wijzigingen zal de gezaghebber bevoegd worden om bij een arbeidsgeschil van grote omvang een bemiddelaar te benoemen. Bij vereffening van een geschil kan een bijzondere bemiddelaar worden aangewezen. Indien deze bijzondere bemiddelaar een onderzoek wil laten instellen is instemming van de gezaghebber vereist. Verder kan de bemiddelaar door de gezaghebber worden geschorst of ontslagen en kan diens instructie worden vastgesteld.

### **Artikel XXVII (Wet van 4 juli 1946 houdende de instelling van een arbeidsbureau BES)**

Met het vervallen van artikel 3 van deze wet is er niet langer toezicht door de Minister van Sociale Zaken en Werkgelegenheid op de naleving van de wettelijke regelingen die betrekking hebben op de openbare arbeidsbemiddeling tussen werkgevers en werkzoekenden op de openbare lichamen. Het toezicht geschiedt voortaan door een orgaan binnen het openbaar lichaam zelf.

### **Artikel XXIX (Wet tot regeling van het toezicht op krankzinnigen BES)**

In artikel 1a, tweede lid, heeft de Rv een bevoegdheid tot indeplaatsstelling indien het openbaar lichaam in gebreke blijft door niet te voorzien in een instelling voor de medische en verpleegkundige verzorging van psychiatrische patiënten. Met de modernisering van het algemene instrumentarium voor interbestuurlijk toezicht in de WolBES zal voortaan bij taakverwaarlozing door het openbaar lichaam in dit geval de Minister van Volksgezondheid, Welzijn en Sport in overeenstemming met de Minister van BZK kunnen overgaan tot de indeplaatsstelling.

## **Hoofdstuk 9 Overgangsrecht**

### *Artikel XXX*

De openbare lichamen krijgen gedurende een jaar de tijd om een eventuele eilandsverordening voor de instelling van een gezamenlijke rekenkamer in te trekken en een nieuwe rekenkamer in te stellen, conform de gewijzigde bepalingen van de WolBES. Verder is hierin een uitzondering getroffen voor de eerste benoeming van de leden van de rekenkamer: hiertoe behoeft de eilandsraad geen overleg te voeren met de rekenkamer. Deze uitzondering is geregeld omdat die rekenkamer op dat moment, in de fase voorbereiding van de benoeming, nog niet bestaat.

## **Hoofdstuk 10 Slotbepalingen**

### *Artikel XXXI*

Dit artikel regelt dat er binnen vijf jaar na inwerkingtreding een evaluatie zal plaatsvinden. Zie ook paragraaf 9 van het algemeen deel van de toelichting.

### *Artikel XXXII*

Dit artikel bevat de inwerkingtreddingsbepaling. Het regelt dat het moment van inwerkingtreding verschillend kan worden vastgesteld voor verschillende artikel of onderdelen daarvan.

Daarbij kan er in elk geval van worden uitgegaan dat voor artikel II, onderdeel B (artikel 9 van de WolBES) en onderdeel F (artikel 38 van de FinBES), zal worden geregeld dat de inwerkingtreding zal plaatsvinden per 1 januari 2027. Dit heeft er mee te maken dat de verhoging van het aantal eilandsraadsleden samenhangt met de verkiezingen op de openbare lichamen. De verwachting is dat de eerstvolgende verkiezingen na het aannemen van deze wet in 2027 zullen plaatsvinden. In het voorgestelde artikel 240b van de WolBES wordt geregeld dat artikel 9 van de WolBES vervolgens weer gewijzigd zal worden per 2031. Voor het aantal gedeputeerden ligt het ook voor de hand dit te wijzigen met ingang van verkiezingen, aangezien op dat moment een nieuw bestuurscollege gevormd zal worden.

Voorts zal voor de FinBES mogelijk een afwijkende inwerkingtredingsdatum gelden, in verband met de begrotingscyclus. De inwerkingtreding van de FinBES zal in dienen te gaan per 1 januari van een jaar, zodat dit gelijk oploopt met het begrotingsjaar. Voor de afwikkeling van voorafgaande begrotingsjaren wordt overgangsrecht opgenomen (artikel 99 van de FinBES).

#### *Artikel XXXIII*

Gelet op aanwijzing 4.35, eerste lid, van de Aanwijzingen voor de regelgeving bevat de citeertitel geen afkortingen. Mocht in de praktijk echter behoefte zijn aan een kortere aanduiding, kan gebruik worden gemaakt van de aanduiding 'Herzieningswet WolBES FinBES'.

De Staatssecretaris van Binnenlandse Zaken en Koninkrijksrelaties,

De Minister van Binnenlandse Zaken en Koninkrijksrelaties,

Appendix 1. Table showing reassignment of tasks of the kingdom representative

Law	Section	Content of task/power	Reassigned to	Notes
WolBES	Section 16(2)	The possibility of granting an exemption to an island council member to enter directly or indirectly into a contract on the matters referred to in the relevant paragraph	Minister of BZK	This is in line with Section 15(2) of the Provinces Act.
WolBES	Section 49(1)	The kingdom representative receives a written declaration of financial interests within thirty days after the adoption of the appointment or dismissal of an island commissioner	The island governor	The task relates to the promotion of the administrative integrity of the public entity and therefore, in accordance with Section 172(2) of WolBES, falls to the island governor.
WolBES	Section 50	The obligation to store and destroy declarations referred to in Section 49(1) of WolBES	The island governor	See the explanatory note to Section 49(1) of WolBES.
WolBES	Section 51	The obligation to maintain confidentiality with regard to declarations received as referred to in Section 49 of WolBES	The island governor	See the explanatory note to Section 49(1) of WolBES.
WolBES	Section 52	The kingdom representative will immediately inform the island council if an island commissioner does not receive the declarations referred to in Section 49 of WolBES in time.	The island governor	See the explanatory note to Section 49(1) of WolBES.
WolBES	Sections 73(2) and (8)	The kingdom representative will make a reasoned recommendation concerning any position to be filled by appointment and make a proposal for reappointment	The island council	This is in line with Sections 61 to 61c of the Municipalities Act and Provinces Act.
WolBES	Section 73(3)	The confidential advisory committee will report confidentially on its findings to the kingdom representative	Minister of BZK	This is in line with Sections 61 to 61c of the Municipalities Act and Provinces Act.
WolBES	Section 85(2)	The possibility of granting an exemption to the island governor for a maximum of three months from the obligation to have his residence in the public entity	Minister of BZK	This is in line with Section 71(1) of the Provinces Act.
WolBES	Section 86(1)	The possibility of granting permission to the island governor to stay outside the public entity for more than six weeks	Minister of BZK	This is in line with Section 71(1) of the Provinces Act.
WolBES	Sections 90(1) to (3)	The designation of an acting island governor if the island governor is prevented from or incapable of acting as such or if he himself arranges such deputisation.	Executive council/follows from the law	From now on, the office of island governor will be deputised for by an island commissioner to be appointed by the executive council.  The chairmanship of the island council will be deputised for by the longest-serving member or possibly the oldest member or another member.  This is in line with Sections 77 and 78 of the Municipalities Act



				and Sections 75 and 76 of the Provinces Act.
WolBES	Section 122a	The island ordinances referred to in Sections 120 to 122 will be sent to the kingdom representative	Minister of BZK	This is in line with Section 95 of the Provinces Act.
WolBES	Section 123(2)	The kingdom representative will grant approval for the island ordinance with regard to benefits at the expense of the public entity	Minister of BZK	This is in line with Section 96(2).
WolBES	Section 179(2)	The island governor will notify the kingdom representative as soon as possible when an emergency ordinance is issued.	Minister of BZK	The Minister of BZK's role here corresponds to the role of the king's commissioner in Section 176(2) of the Municipalities Act.
WolBES	Section 179(4)	If the emergency ordinance is not ratified, the island governor may lodge an administrative appeal with the kingdom representative within 24 hours	Minister of BZK	The Minister of BZK's role here corresponds to the role of the king's commissioner in Section 176(4) of the Municipalities Act.
WolBES	Section 179(5)	The kingdom representative may suspend the operation of an emergency ordinance as long as it has not been ratified	Minister of BZK	The Minister of BZK's role here corresponds to the role of the king's commissioner in Section 176(6) of the Municipalities Act.
WolBES	Section 204(1a)	Reporting to whichever of Our Ministers it may concern about matters or special findings that concern the public entities	The island governor	This is for the benefit of organisational stability and independence. The reassignment is in line with the advice of the Council of State.  This task will be included in Section 172(3a).
WolBES	Section 204(1h)	The presentation to whichever of Our Ministers it may concern of written and unwritten decisions of the island governments pursuing any legal consequences that, in his opinion, qualify for annulment	The island governor	This power already lay with the island governor (Section 223(1) of WolBES) and will lie with the island governor alone when the position of kingdom representative is abolished. This is in line with the advice of the Council of State.  This task will be included in Section 172(3b).
WolBES	Section 204(1j)	All other powers to promote good governance in the public entities	The island governor	This is for the benefit of organisational stability and independence. The reassignment is in

				line with the advice of the Council of State.  This task will be included in Section 172(3c).
Common Regulations Act	Section 126a	In the Common Regulations Act, the term island commissioners means: the kingdom representative	Minister of BZK	Due to the lack of a regional, overarching administrative layer over the public entities, the task is assigned to the Minister of BZK.
Common Regulations Act	Section 129(1)	Disputes concerning the application, in the broadest sense, of a regulation between administrations of participating public entities or between administrations of one or more participating public entities and the administration of the collaborative body or the joint body will be decided on by the kingdom representative	Minister of BZK	See the explanatory note to Section 126a of the Common Regulations Act.
Common Regulations Act	Sections 129(2) and (3)	When deciding on the dispute, the kingdom representative may instruct the administration concerned to take a decision with due observance of the provisions of its decision and within a period to be defined for the purpose. If the decision has not been taken within the set period, this will be done by the kingdom representative. In urgent cases, the kingdom representative may take a decision on the dispute instead of the relevant administration	Minister of BZK	See the explanatory note to Section 126a of the Common Regulations Act.
Rental Housing Market Measures (Caribbean Netherlands) Act (Wet maatregelen huurwoningmarkt Caribisch Nederland)	Section 1.6(2)	A decision regarding the appointment, suspension or dismissal of the chair, deputy chair, secretary or deputy secretary of the rent tribunal requires the approval of the kingdom representative for the public entities Bonaire, Sint Eustatius and Saba.	Minister of BZK	The task is suitable for the Minister of BZK because it contains supra-local and coordinating elements.
Chambers of Commerce and Industry (BES) Act (Wet op de Kamers van Koophandel en Nijverheid BES)		In the event of serious negligence on the part of the board of the Chamber in complying with obligations under this law and other statutory regulations, the kingdom representative will take a decision to ensure such compliance on behalf of the board.	The island governor	The task is suitable for the island governor, because...
Port Security	Section 7(2)	The kingdom representative is authorised to change the security level of a port facility	The Minister of Justice &	This is in line with Section 12(2) of the

(BES) Act (Havenbeveiligingswet BES)			Security in consultation with the Minister of BZK, unless there is an emergency	Port Security Act that applies in the European Netherlands.
Act Implementing the Convention Concluded between the Netherlands and Great Britain, Containing Provisions to Facilitate the Conduct of Legal Proceedings in BES (Uitvoering wet van het tussen Nederland en Groot-Brittannië gesloten verdrag, houdende bepalingen tot het vergemakkelijken van het voeren van rechtsgedingen BES)	Section 2	If the court of first instance, to which a request for communication of any document has been sent or forwarded in accordance with Article 3 of the Convention, rules that the case referred to in letter f of that Article is present, it shall send the documents, stating the reasons, to the kingdom representative for the public entities of Bonaire, Sint Eustatius and Saba, which, if necessary, shall decide after further investigation	Ministers of Justice & Security and Foreign Affairs	This is in line with Section 2 of the Act Implementing the Convention with Great Britain on Mutual Legal Assistance in Civil and Commercial Matters (Wet uitvoering rechtsvorderingsverdrag Groot-Brittannië).
Primary Education (BES) Act (Wet primair onderwijs BES)	Section 58	The kingdom representative is authorised to impose a disciplinary penalty or suspension or to dismiss	Minister for Primary and Secondary Education (henceforth: Minister for PVO)	The task falls within the portfolio of the Minister for PVO.
Primary Education (BES) Act	Sections 94(2), (4), (7) and (8)	The kingdom representative may take decisions regarding the termination of the use of a building or site by a school that is not maintained by the public entity.	Minister for PVO	The task falls within the portfolio of the Minister for PVO.
Primary Education (BES) Act	Section 113(3)	The competent authority of a school that is not maintained by the public entity may lodge an appeal with the kingdom representative against certain decisions	Minister for PVO	The task falls within the portfolio of the Minister for PVO.
Secondary Education Act 2020	Section 1.2	In this law and the provisions based on it, for 'provincial executive', read: the kingdom representative	Minister for PVO	The task falls within the portfolio of the Minister for PVO.

(Wet voortgezet onderwijs 2020)				
Secondary Education Act 2020	Sections 11.78(4), (6), (8) and (9)	The kingdom representative may take decisions regarding the termination of the use of a building or site by a school that is not maintained by the public entity.	Minister for PVO	The task falls within the portfolio of the Minister for PVO.
Secondary Education Act 2020	Section 11.87	The kingdom representative is authorised to impose a disciplinary penalty or suspension or to dismiss	Minister for PVO	The task falls within the portfolio of the Minister for PVO.
Labour Disputes (BES) Act 1946 (Arbeidsgeschillenwet 1946 BES)	Section 1(2)	The kingdom representative appoints, suspends and dismisses the mediator and determines his instructions	The island governor	The task is assigned to the island governor because of his independent role in the social and socio-economic domain.
Labour Disputes (BES) Act 1946	Section 7(1)	If the dispute involves more than one business or has arisen in several businesses, the kingdom representative may, at the request of the mediator, appoint an extraordinary mediator for each business or for each dispute	The island governor	See the explanatory note to Section 1(2) of the Labour Disputes (BES) Act 1946.
Labour Disputes (BES) Act 1946	Sections 8(1) and (4)	The kingdom representative may appoint a special mediator to settle a dispute	The island governor	See the explanatory note to Section 1(2) of the Labour Disputes (BES) Act 1946.
Labour Disputes (BES) Act 1946	Section 9(3)	With the approval of the kingdom representative, the special mediator may instruct experts to conduct an investigation	The island governor	See the explanatory note to Section 1(2) of the Labour Disputes (BES) Act 1946.

Appendix 2. Table providing an overview of the advisory and supervisory tasks of Cft BES

For the sake of brevity, in the table below the 'Minister of BZK' is referred to as 'MinBZK' and 'Cft BES' as 'Cft'.

<b>Task/power according to current FinBES</b>	<b>Section of current FinBES</b>	<b>Proposal regarding task/power</b>	<b>Section of FinBES in bill</b>	<b>Explanation of changes</b>
Advising the public entities in the context of supervising the application of the standards laid down by this Act with regard to the preparation and implementation of and accountability for the budget by the public entity, and of supervising the improvement of the financial management, the organisation and operation of the records and the payment system	Section 4(1), under a	Advising a public entity on the budget, financial policy and financial management of the public entity concerned at the request of the executive council.	Section 4(1), under a	In addition to the fixed moments for the provision of advice by Cft, under this proposal advice may only be provided at the request of the public entity. In addition, the description of the subjects on which advice is given has been simplified and made more appropriate
Advising Our Minister in the context of supervising the application of the standards laid down by this Act with regard to the preparation and implementation of and accountability for the budget by the public entity, and of supervising the improvement of the financial management, the organisation and operation of the records and the payment system	Section 4(1), under a	Advising Our Minister at Our Minister's request or on its own initiative in the context of: - supervising compliance with the standards laid down by and pursuant to this Act with regard to the preparation and implementation of and accountability for the budget by the public entity; - supervising the financial management, including the organisation and operation of financial processes and records and the payment system	Section 4(1) under b, points 1 and 2	It is made explicit that the advice may be solicited or unsolicited. This general advisory task is in addition to the specific advisory tasks elsewhere in the law
The supervision of the day-to-day management by the executive councils and the assessment in that context of whether the conditions laid down by this law have been met for the contracting of loans by a public entity	Section 4(1), under b	Advising MinBZK at the request of MinBZK or on its own initiative in the context of assessing whether the conditions laid down by and pursuant to this Act have been met for the contracting of loans and credits by a public entity	Section 4(1), under b, point 3	This supervision will be entrusted to the Minister of BZK as the supervisory authority. In addition, supervision of day-to-day management will be discontinued
Performing tasks on behalf of MinBZK in the context of the implementation of this Act and the provisions based on it	Section 4(1), under c	-	-	This is not appropriate for an independent advisory board and task is discontinued
Once every six months, Cft will submit a written account of its activities to MinBZK. Cft will send a copy of this report to the relevant executive councils and island councils	Section 4(2)	Cft will submit a written account of its activities accounts to MinBZK and a copy thereof to the relevant executive councils and island councils every six months.	Section 4(6)	No change
-	-	Advising MinBZK on approval of participation in a private legal entity by the public entity	Section 9(4)	Cft will have an additional advisory task here

-	-	Advising MinBZK on taking a decision on the establishment, extension or termination of preventive supervision in the event of disposals of property	Section 10(4)	Cft will have an additional advisory task here, because a form of tiered supervision will be introduced and Cft will give advice in connection with changing supervisory regime
Current account at Cft, including Cft's consent to cover liquidity shortfalls and determine maximum and minimum credit	Section 12	-	-	The task does not fit with the role of an advisory board and is assigned to MinBZK
The executive council will always send the draft budget for the coming year to Cft. This also applies to budget amendments	Sections 17 and 18(2)	At the light supervision level, the draft budget will not be sent to the public entity for advice from Cft. This will take place in the case of moderate or strict supervision of the budget	Section 32h	In connection with the introduction of tiered supervision. At the light supervision level, Cft may advise MinBZK on its own initiative about the adopted budget and whether supervision should be increased
Cft may appoint an auditor as referred to in Article 393(1) of Book 2 of the Civil Code to investigate the lawfulness and efficiency of the conducted administration	Section 31(2)	-	-	The auditor already has a role in the budget process, so no determination is necessary
If the annual accounts show that there is a deficit in the current budget or capital budget or that the interest expense standard has been exceeded, Cft will advise the executive council on amending the budget for the current year and on the budget for the next year	Section 31(3)	-	-	This task lapses as part of the review of financial supervision
-		Cft will advise MinBZK on whether or not to approve the budget (moderate financial supervision)	Section 32a(4)	Cft gains an additional advisory task here in connection with the tiered supervision of the budget
-	-	Before taking a decision to withdraw prematurely, MinBZK will ask Cft to give advice within a period to be set by MinBZK.	Section 32a(8)	Cft gains an additional advisory task here in connection with the tiered supervision of the budget
If necessary, bringing it to the attention of the executive council that an appropriate provision is required for policy measures, reporting on this to MinBZK and then taking special measures by order of MinBZK.	Section 33	-	-	Task lapses in the context of the revision of financial supervision and the taking of measures is not in keeping with the role of advisory board
Cft may conduct an investigation at any time into the management and structure of the financial organisation	Section 34(3)	-	-	Task lapses in the context of the revision of supervision of financial management

Cft may make agreements with an executive council to improve financial management, material management and the requisite records for this purpose	Section 34(4)	-	-	Task lapses in the context of the revision of supervision of financial management and is not in keeping with the role of advisory board
Cft will supervise the organisation of the check that takes place in the context of the implementation of the budget	Section 34(9)	-	-	Task lapses in the context of the revision of financial supervision and is not in keeping with the role of advisory board
Cft will maintain a register of names and positions of persons who are mandated to perform legal acts under private law	Section 35(4)	-	-	The provision regarding the mandating of legal acts under private law has lapsed, so there is no longer a register
Granting consent for making payments other than through the banking system	Section 36(5)	-	-	The task does not fit with the role of an advisory board and is assigned to MinBZK
Making cash payments, using debit cards, credit cards, chip cards and other electronic payment methods is not permitted without the prior written consent of Cft. In consultation with the executive council, Cft may set a spending limit for the use of a credit card.	Section 36(8)	-	-	This task partially lapses. With regard to credit cards, the authority will lie with MinBZK, because giving consent or setting conditions is not appropriate for an advisory board
Receiving non-monetary items as a monetary payment is not permitted. This may be deviated from with the written consent of Cft.	Section 36(10)	-	-	The task does not fit with the role of an advisory board and is assigned to MinBZK
The granting of advances on payments to be made to third parties will take place with due observance of rules regarding the granting of advances to be drawn up by Cft after consultation with the executive council.	Section 36(12)	-	-	The task does not fit with the role of an advisory board and is assigned to MinBZK
With effect from a date to be determined by Cft, the executive council, in agreement with Cft, is responsible for: Bank accounts, daily transfer to the bank account of Cft; and the sending of daily statements of the movements on the bank accounts to Cft. Cft is also responsible for replenishing the debit balance and reimbursing the credit balance	Section 37	-	-	The task does not fit with the role of an advisory board and is assigned to MinBZK
-	-	Before taking a decision to introduce moderate supervision of financial management, MinBZK will ask Cft to give advice within a period to be set by MinBZK	Section 38a(2)	This is a new power, in the context of the tiered supervision of financial management

-	-	Before taking a decision to introduce strict supervision of financial management, MinBZK will ask Cft to give advice within a period to be set by MinBZK	Section 38b(2)	This is a new power, in the context of the tiered supervision of financial management
-	-	Advising on agreements to improve financial management, in the strict level of supervision with regard to financial management	Section 38b(3)	This is a new power, in the context of the tiered supervision of financial management
Right to receive information from the executive council (which Cft deems necessary for the performance of tasks) and to access/inspection of all goods, records, documents and other information carriers	Sections 39(1) and (2)	Right to receive information from the executive council (which Cft deems necessary for the performance of tasks) and to access/inspection of all goods, records, documents and other information carriers (which Cft deems necessary for the performance of tasks)	Sections 39(1) and (2)	Small change to clarify that Cft only needs to gain access or inspection to the extent necessary for its tasks.
A request to provide a loan as referred to in the first paragraph will be submitted by the island council of the public entity to MinBZK whom it concerns, through the intervention of Cft. Cft will include its advice with the request	Section 89(2)	A request to provide a loan as referred to in the first paragraph will be submitted by the island council of the public entity to MinBZK whom it concerns, through the intervention of Cft. Cft will include its advice with the request	Section 89(2)	No change