

WIJ WILLEM ALEXANDER,
BIJ DE GRATIE GODS,
KONING DER NEDERLANDEN,
PRINS VAN ORANJE-NASSAU,
ENZ. ENZ. ENZ.

Decree determining the moment when the provisions of Section 15 of the St Eustatius Administrative Provisions (Restoration) Act (*Wet herstel voorzieningen Sint Eustatius*) enter into force

On the recommendation of the State Secretary for the Interior and Kingdom Relations dated May 25th 2023, no. 2023-0000267550 and acting in accordance with the view of the cabinet;

With regard to Section 15 of the St Eustatius Administrative Provisions (Restoration) Act;

Have approved and decreed:

Sole article

The provisions of Section 15 of the St Eustatius Administrative Provisions (Restoration) Act shall enter into force on the day following the date of publication of the Bulletin of Acts and Decrees in which this decree appears.

Our Minister of the Interior and Kingdom Relations is responsible for the implementation of this decree, which will appear in the Bulletin of Acts and Decrees together with the associated explanatory memorandum.

The State Secretary for the Interior and Kingdom Relations
Digitalisation and Kingdom Relations

Alexandra C. van Huffelen

Explanatory Memorandum

Introduction

On the 1st of October 2022, the provisions of Section 13 of the St Eustatius Administrative Provisions (Restoration) Act entered into force. This means that the Island Council obtained the authority from that date to appoint and dismiss Island commissioners, members of the Executive Council, and that the Public Entity of St Eustatius (OLE) is now in the second phase (better known as phase 2.0) of the St Eustatius Administrative Provisions (Restoration) Act. The next steps towards the return of powers to the local government on St Eustatius are, on the one hand, the entry into force of the provisions of Section 14 of the St Eustatius Administrative Provisions (Restoration) Act (better known as phase 2.1, during which – briefly put – the Island Council and the Executive Council obtain their tasks and powers in relation to the registrar’s office and the civil service organisation respectively) and, on the other, the entry into force of the provisions of Section 15 of the St Eustatius Administrative Provisions (Restoration) Act (better known as phase 2.2., during which – briefly put – the financial powers are handed back).

This Royal Decree concerns the transition to phase 2.2.

Criteria for moving to phase 2.2

Under Section 15 of the St Eustatius Administrative Provisions (Restoration) Act, phase 2.2 will only start when the Island Council and the Executive Council can be expected to properly carry out the tasks and powers conferred on them by the Public Entities (Bonaire, St Eustatius and Saba) Finances Act (*Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba* (FinBES)).

The explanatory memorandum to the St Eustatius Administrative Powers (Restoration) Act further specifies this statutory criterion by listing a number of criteria¹, being:

- a. the financial processes have been digitised and centralised;
- b. the planning and control cycle is in accordance with the FinBES; and
- c. all the actions under the Financial Management Action Plan have been accomplished.

Since the administrative intervention, the OLE, supported by my ministry, has worked on improving the financial management of the OLE. By now, the process of restoring the frameworks within which the Island Council and the Executive Council can again properly carry out their tasks and powers is in the final phase of realisation. Two of the three criteria (criteria a. and b.) have been completed. The last criterion has also been realised for the greater part. Clear arrangements have been made with the OLE about the completion of the remaining part. For the transition to phase 2.2 it is expected that the discussion immediately following the elections with the newly elected members of the Island Executive and Island Council about committing to these arrangements will have a positive outcome. These arrangements will be described in more detail in section c. below.

In her letters of the 12th of January 2023² and a complementary one that will be send around to the elections, the Government Commissioner described the progress made and results achieved in respect of the above criteria and the aforesaid arrangements. In

¹ Parliamentary Papers II 2019/20, 35 422, no. 3, pp. 18-19.

² Letter dated the 12th of January 2023 from the Government Commissioner to the State Secretary for the Interior and Kingdom Relations concerning progress on the criteria for phase 2.2.

deciding whether a move to phase 2.2 is justified, I have been guided by the information contained in those letters. The material criteria will be discussed in more detail below.

a. The financial processes have been digitised and centralised.

The Government Commissioner concludes that this criterion has been fulfilled. Because of the so called "Improvement steps", the financial and administrative processes have been digitised and centralised, which has a positive impact on the speed and auditability of these processes.

All hardcopy invoices have been digitised. In addition, the OLE has purchased a digital accounting system in order to digitise the HR, Salaries and Finances processes. By using this accounting system, it has digitised and thereby centralised the following financial work processes, among others: registration of budget holders, accounts payable, accounts receivable, operation, fixed assets and profit and loss. In addition, the financial module of the system is used for recording all financial commitments and invoices, among other things. The system also records the changes to the workforce, sickness absence, leave and salaries. The implementation of the accounting system was fully completed early in April 2020. Among other things, this resulted in an improvement of the digital environment in relation to the audit of the annual accounts.

The OLE, together with the external auditor, use a protected digital environment in which the audit of the annual report and accounts is documented in digital format. Using this environment has the following benefits: the efficiency and speed of the audit of the annual report and accounts have been improved, the data recorded and changes to this data can be viewed in real time, the reporting process is quicker and data analysis has been accelerated and simplified.

The procurement and payment process has been centralised as well. One element of the Financial Management Action Plan (criterion c.) is that the procurement process should also be digitised. Arrangements on the implementation of this "improvement step" have been made and are explained in section c per below.

All these measures together provide sufficient assurance to regard this criterion as completed.

b. The planning and control cycle is in accordance with the FinBES.

The Government Commissioner concludes that this criterion has also been fulfilled. The backlogs in the OLE's annual accounts (2017, 2018, 2019, 2020 and 2021) have been cleared, and the annual reports under the FinBES are again in step with the regular schedule. The same applies to the budget and the quarterly implementation reports. The quality of the reports has improved as well. On top of that, recommendations from the BES Financial Supervision Board have been implemented, and a budget for 2023-2026 has been presented which aims to work towards a balanced budget over a number of years.

All the products in the planning and control cycle (that is, the budget and the annual report and annual accounts) are now compliant with the guidelines of the Public Entities BES (Budgets and Accounts) Decree (*Besluit begroting en verantwoording openbaar lichamen BES* (BBV-BES)). In 2022, the OLE's Unit Finance managed to deliver all the requested elements under the planning and control cycle correctly, in time and in accordance with the guidelines of the BBV-BES. Whereas these products were still delivered with the help of external insourcing at the start of the intervention, the Unit

Finance is now doing this entirely on its own. In the past two years, the Unit Finance was coached in generating these products independently. In addition, investments were made in (extra) knowledge at the department. For example, the unit as a whole successfully completed the BBV training programme in 2022.

All these measures together provide sufficient assurance to regard this criterion as completed.

c. All the actions under the Financial Management Action Plan have been accomplished.

In 2018, the Government Commissioner identified a set of more than one hundred measures to improve the financial management. On the 12th of January 2023,³ the Government Commissioner informed me that the majority of these improvement measures had meanwhile been implemented. The following ten improvement steps are still to be implemented, however:

- 1) *Digitisation and centralisation of financial processes*: further improvement of the procurement process through activation of the procurement module in the digital accounting system;
- 2) *Digitisation and centralisation of financial processes*: making improvements to the digital accounting system in line the 'roadmap' developed, i.e., a timetable for implementing the improvements;
- 3) *Planning and control cycle*: setting up a contracts register;
- 4) *Planning and control cycle*: structurally resolving two (historical) comments by the external auditor with regard to the annual accounts;
- 5) *Planning and control cycle*: giving a quality impulse to the levy and collection of motor vehicle tax, tourist tax, waste charges and land lease;
- 6) *Planning and control cycle*: formulating specific targets for each policy field in which subsidised institutions operate;
- 7) *Planning and control cycle*: work was started in 2022 on the development of a Strategic Human Resources Plan with the help of an external organisation. This plan must be maintained and subsequently implemented;
- 8) *Other/general*: appointing an inspector (and formalising this appointment) in accordance with the FinBES;
- 9) *Other/general*: concluding contracts with bailiffs for enforced collection under private law;
- 10) *Other/general*: concluding contracts with bailiffs for enforced collection under public law.

The final element of the improvement measures identified is the administrative organisation and internal control, also known as Administrative Organisation/Internal Control (AO/IC). In the autumn of 2022, an independent review was carried out of the OLE's AO/IC. I already informed the House of Representatives of the States General about this in my letter of the 15th of December 2022.⁴ The conclusion of that review was that – although the OLE has taken major steps – significant improvements are still required in the area of financial management. It is important that the proposed improvement steps are implemented, because these are necessary for the proper functioning of the OLE in the service of the island and its citizens.

³ Letter dated the 12th of January 2023 from the Government Commissioner to the State Secretary for the Interior and Kingdom Relations concerning progress on the criteria for phase 2.2.

⁴ Parliamentary Papers II 2022/23, 35422, no. 18.

In the discussions that I have had with the Government Commissioner, Island commissioners and the Island Council, it became clear that they too endorse the results of the review and want to work on the "improvement steps" proposed. It was therefore agreed that a part of the "improvement steps" would be completed prior to the Island Council elections (and therefore under the direction of the Government Commissioner). The other "improvement steps" will be completed after the elections, under the responsibility and direction of the Executive Council and with the support of my ministry.

Close to the elections, the Government Commissioner will inform me that the improvement steps that needed to be completed prior to the Island Council elections have indeed been completed. Briefly summarised, these improvements concern the identification and subsequent implementation of the standards framework and the description and implementation of the work processes regarding salaries and social security contributions, procurement and tendering, and subsidies. The improvement steps that are still to be carried out relate to five AO/IC work processes that must be described in more detail and implemented. Since the implementation of the AO/IC work processes has a major impact on the OLE's organisation, this takes longer to complete. This involves a further description and implementation of the following five processes:

- 1) *Collection of local levies and taxes*: this involves the local collection of, for example, port dues and waste charges. The underlying processes need to be given greater depth;
- 2) *Management of assets*: the objective is to gain insight into current valuation, future maintenance obligations and revenue in relation to the OLE's assets;
- 3) *Planning and control cycle*: the objective is to generate insight into the extent to which (internal) targets are achieved and the means required for that purpose. In this way, the OLE may gain control over its operations;
- 4) *Management of government participations*: the objective is to gain insight into the potential risks which the OLE runs in relation to government participations, and to check that the companies in which those participations are held comply with the Corporate Governance Code;
- 5) *Other processes*: this involves a number of general processes relating to other relevant items in the annual accounts and transactions within the OLE.

Altogether, therefore, there are ten remaining improvement steps and five remaining process descriptions under the AO/IC which are still to be implemented this year. Arrangements have been made with the OLE about the elaboration and implementation of these "improvement steps". For the transition to phase 2.2 it is expected that the discussion immediately following the elections with the newly elected members, Island Council members and appointed Island commissioners as members of the Executive Council about committing to these arrangements, will have a positive outcome. The realisation of the improvement steps will be monitored by a steering group. In the tenth progress report, I promised that I would support the OLE in the elaboration and implementation of the remaining improvement steps. Once these improvement steps have been implemented, for that matter, the AO/IC will continue to require the OLE's attention, and further development and maintenance will be necessary.

Conclusion:

In view of the above arrangements made and the fundamental steps taken in getting the financial management back on track, the Island Council and the Executive Council can be expected to properly carry out the tasks and powers conferred on them by the FinBES. This means that there is sufficient basis to move to phase 2.2, that is, the entry into force of the provisions of Section 15 of the St Eustatius Administrative Provisions (Restoration) Act.

During phase 2.2, the Island Council and the Executive Council will obtain the tasks and powers conferred on them by the FinBES. This involves matters such as the right to approve and amend budgetary policy. However, the financial supervision of the OLE will be subject to a number of additional provisions until the third phase of the St Eustatius Administrative Provisions (Restoration) Act.⁵ For example, some additional grounds will apply for withholding approval in respect of decisions with financial implications and in respect of the budget if, briefly put, such a decision or that budget will result in:

- disproportionately adverse consequences for the residents of the OLE;
- unreasonable administrative or financial burdens on the OLE;
- an impediment to the proper functioning of the island administration.

In addition, approval requirements will apply to the adoption of (i) the quarterly implementation reports, (ii) the annual accounts and the annual report, (iii) the island ordinance on the financial management and the set-up of the financial organisation, (iv) the island ordinance on monitoring of the financial management and the set-up of the financial organisation, and (v) the tax ordinances.

Royal Decree:

Section 15 of the St Eustatius Administrative Provisions(Restoration) Act provides that phase 2.2 will commence at a moment to be determined by Royal Decree, whereby Section 8 of that Act will be repealed, Section 10 of that Act will be amended and a new Section 10a will be inserted into that Act.

As stipulated in Section 17 of the St Eustatius Administrative Provisions(Restoration) Act, this Royal Decree was submitted to both Chambers of the States General for preliminary scrutiny ('voorhang') during a period of four weeks – of which three weeks outside the recess period – prior to the recommendation to H.M. The King.⁶ During the preliminary scrutiny period, the Second Chamber has been informed on the progress concerning the improvement steps and the commitment of the islands' government to these steps. Moreover, the Second Chamber has had the opportunity to react to this information until the 22nd of May and during this time, the period for preliminary scrutiny was put on hold. This was done in view of the extraordinary nature of the procedure for restoring the provisions of the public entity of Sint Eustatius and the questions of the Second Chamber concerning this Royal Decree.

This is out of step with the fixed date for changes⁷ because it is considered extremely important that the normal administrative relations and powers of the Island Council and the Executive Council should be restored as soon as possible.

The State Secretary for the Interior and Kingdom Relations
Digitalisation and Kingdom Relations,

Alexandra C. van Huffelen

⁵ The new Section 10a of the St Eustatius Administrative Provisions (Restoration) Act.

⁶ Parliamentary Papers II 2022/23, 35 422, no. 20.

⁷ Instruction 4.17 of the Legislative Drafting Instructions (*Aanwijzingen voor de regelgeving*).