

## **EXPLANATORY MEMORANDUM**

### **I. GENERAL**

#### **1. Purpose and reason**

The government wants to start contributing profitably to the economic development of the Caribbean countries by opening up guarantee schemes of the Netherlands Enterprise Agency (RVO), the National Growth Fund, and renewable energy production schemes (SDE++) to applications from across the Kingdom. Direct opening of these schemes to Aruba, Curaçao, and St. Maarten proved impossible. It was therefore decided to elaborate schemes based on the Framework Act on other BZK Subsidies (hereinafter referred to as: the Framework Act). Section 2(1)(d) of the Framework Act sets out the authority for the Minister of the Interior and Kingdom Relations (hereinafter referred to as: the Minister) to grant subsidies for activities within the framework of the Kingdom Relations and the Public Entities of Bonaire, St. Eustatius, and Saba. Pursuant to Sections 3 and 4(1) of the Framework Act, further rules on those subsidies can be laid down by Ministerial Decree. The present subsidy scheme uses these bases.

The funds for the Strengthening Sustainable Earning Capacity ACS and BES Subsidy Scheme (hereinafter referred to as: the subsidy scheme) are released from the National Growth Fund of which the Minister of Economic Affairs and Climate Policy and the Minister of Finance are fund managers. In view of this, this subsidy scheme was adopted in agreement with these Ministers. For Aruba, Curaçao, and St. Maarten, this subsidy scheme is necessary to implement the aforementioned passage from the coalition agreement, as the existing Dutch legislation and regulations are not applicable to these countries. The legislation and regulations regarding the National Growth Fund are, however, applicable in the Caribbean Netherlands. However, it has become clear that the criteria of the National Growth Fund do not sufficiently fit the situation in the Caribbean Netherlands and that customisation is required. The subsidy scheme therefore also provides for customisation for the Caribbean Netherlands.

Section 2 of the scheme specifies that the purpose of the scheme is to strengthen the sustainable earning capacity, with a view to an economically, socially, and environmentally sustainable future for the planet and for present and future generations in all countries of the Kingdom, by making subsidies available for investments that contribute to sustainable, economic development of the Caribbean part of the Kingdom as well as for investments for activities necessary for their preparation. The term 'sustainable earning capacity' is defined in Section 1 of the subsidy scheme as economic growth that Aruba, Curaçao, St. Maarten, Bonaire, St. Eustatius or Saba, with a positive impact on social benefits and burdens, can generate on a long-term structural basis, either individually or collectively. Because of the economic structure in the Caribbean part of the Kingdom, this could include large-scale, multiannual investments, in the areas of climate adaptation and energy transition, education, digitisation of the government, basic infrastructure, cost-efficient food production, and sustainabilisation of economic sectors.

#### **2. Outline of the scheme**

The provisions of the Framework Act and the Framework Decree on BZK Subsidies (hereinafter referred to as: the Framework Decree) are applicable to this scheme. Sections 5, 6, 7, 9, 10, and 11 regulate a number of additional topics compared to the provisions of the Framework Act and the Framework Decree.

The scope of the scheme is laid down in Section 3 of the scheme. Section 3 also stipulates who can apply for a subsidy. Section 4 stipulates that an applicant considering applying for a subsidy should go through a mandatory advisory process by requesting a quick scan. Section 5 determines the subsidy ceiling, method of distribution, and application period. Sections 6 and 7 deal with the subsidy application process, which is divided into two stages. See below in paragraph 3 for a more detailed explanation. Section 8 contains the grounds for rejection per phase and, pursuant to Section 9, an advisory committee, called the Advisory Committee Strengthening Sustainable Earning Capacity ACS and BES (hereinafter referred to as: the Advisory Committee), is set up. This Advisory Committee

advises on the ground for rejection in Section 8 preamble and (b)(2). The Minister can also seek advice from the Advisory Committee on the application of other parts of the scheme<sup>1</sup>. Section 10 of the scheme provides that subsidy recipients receive advances. Section 11 of the scheme sets out the obligations for the subsidy recipient in addition to what is regulated in Section 21 of the Framework Decree. Sections 12 and 13 deal with the entry into force, expiry, transitional law, and citation.

### **3. Process of subsidy application and subsidy granting**

#### *3.1 Application*

The scheme allows applications for subsidies for two phases, namely phase A and phase B. The scheme provides the opportunity to apply for subsidies for activities that make a positive contribution to the strengthening of the sustainable earning capacity (phase B). To support promising applications for these project proposals for phase B, there is also the possibility to apply for funding for phase A prior to phase B. In phase A, funding can be applied for the performance of surveys into the technical and economic feasibility of potential project proposals and for the preparation of an application for phase B. Phase A is not compulsory. It is also possible to immediately submit a subsidy application for phase B.

#### *3.2 Quick scan*

To arrive at the best possible subsidy application in both phases, the potential applicant goes through a quick scan at RVO, which implements the scheme by mandate on behalf of the Minister of the Interior and Kingdom Relations. In this way, it is possible for the applicant to have an early exploratory discussion with RVO at an early stage in the application process and to receive feedback from RVO on an initial description of a potential application. This gives the potential applicant an early, low-threshold insight into how well the project proposal fits with the scheme and what, if any, areas of concern are in order to arrive at a subsidy application that may fit within the scheme.

Going through this quick scan process will take several weeks. After the opinion of the Minister, it should still be possible to change the subsidy application. The quick scan process takes up to six weeks.

The outcome of the quick scan process is not binding. Therefore, a negative opinion does not prevent the submission of a subsidy application.

Going through this process by means of a quick scan is mandatory. Only applicants in phase B who have already requested a quick scan in phase A do not have to do so again in phase B.

#### *3.3 Phase A*

The potential applicant can submit a subsidy application in phase A for the further development of an application in phase B for a project that contributes to the strengthening of the sustainable earning capacity. Part of phase A is the mapping of the technical and economic feasibility of the proposed project in phase B, including in-depth studies into the feasibility of the project. Depending on the research data already available, the proposed feasibility study may or may not consist of, for example, literature research, patent research, an inventory of available technology and potential partners, a market survey, and a competitive analysis. Using the aforementioned studies and any research data already available, information is retrieved that establishes a baseline of the mandatory and project-specific indicators for the success of the project. In addition, the results should provide sufficient insight into the feasibility of the activities that will be undertaken within the project in phase B. This information is required for a subsidy application in phase B.

Furthermore, the subsidy in phase A can be used for activities required for the preparation of a subsidy application for phase B.

The end result of phase A is a subsidy application that can be submitted for phase B. The end result of phase A may also be the conclusion that it is not appropriate to submit a subsidy application for phase B in view of the results of the studies carried out into, among other things, the technical and economic feasibility of the proposed project.

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<sup>1</sup> The task and role of the Advisory Committee are detailed in Section 3.4 of this explanatory memorandum.

Section 8 sets out the maximum amounts of a subsidy that can be granted for phase A, namely €300,000 for a subsidy in Aruba, Curaçao, and St. Maarten and €100,000 for a subsidy in Bonaire, St. Eustatius, and Saba.

#### *3.4 Phase B*

To assess the strengthening of the sustainable earning capacity, the applicant will be required to qualitatively outline how the proposed activities will lead, directly or indirectly, to the strengthening of the sustainable earning capacity. To the extent possible, the applicant should also substantiate these estimates quantitatively. For example, depending on the type of proposal, this may imply that potential application markets and areas need to be identified. A numerical substantiation of the market size, the market share, and a growth forecast may also need to be provided. This includes not only the growth of a specific business, but also what this could mean for the growth of a sector or industry in Aruba, Curaçao or St. Maarten or on Bonaire, St. Eustatius or Saba.

To assess the strengthening of the sustainable earning capacity, the applicant will also be required to identify further social impacts. In assessing the social impacts, the Advisory Committee will evaluate the extent to which a proposal contributes to an economically, socially, and environmentally sustainable future for the planet and for current and future generations.

Applicants are requested to provide qualitative insight into the positive social impacts of the proposal and what mitigation measures they are taking for potential negative social impacts. A negative balance of social benefits and costs will lead to rejection of the application. The contribution to the strengthening of the sustainable earning capacity of an application is assessed partly on the basis of the strategic substantiation, the quality of the plan of activities, and the cooperation and governance. After all, these are components of an application that strongly influence the realisation of the strengthening of the sustainable earning capacity.

The plan must be well-designed, sufficiently detailed, feasible, and financially sound in order to assess the expected impact on the sustainable earning capacity. The cooperation and governance will also largely determine whether the objectives can be achieved. The realisation of a substantial impact on the sustainable earning capacity can probably be achieved mainly in close cooperation between several parties and with a solid governance and organisational structure. In many cases, the ultimate success of a proposal will not depend solely on the applicant for the subsidy. The quality of the plan also depends on having sufficient support and involvement from other relevant parties. If the aforementioned elements of the proposal individually or collectively give insufficient confidence in the realisation of the proposed strengthening of the sustainable earning capacity then a negative opinion will be issued by the Advisory Committee to the Minister.

Subsidy applications in both phase A and phase B will be assessed in order of receipt. The order of receipt determines the order of eligibility for the distribution of the applicable subsidy budget. Only complete applications are eligible for a substantive assessment. If the information provided is incomplete then the applicant is given the opportunity to provide the missing information within a certain period of time upon application of Section 4:5 of the General Administrative Law Act (hereinafter referred to as: the Awb). The day the application is completed will then count as the date of receipt.

#### *3.5 Advisory Committee*

Pursuant to Section 9, there is an Advisory Committee Strengthening Sustainable Earning Capacity ACS and BES (hereinafter referred to as: the Advisory Committee) with the task to advise the Minister on investment proposals for the provision of financial resources under the scheme. The Advisory Committee operates independently and decides on its own working method in the context of advice issued on proposals. To this end, the Advisory Committee shall prepare a framework of analysis and make it publicly available on the website of [PM]. The Advisory Committee assesses proposals on their (proposed) impact on the sustainable earning capacity, quantitatively and qualitatively, against the investment costs and within the preconditions of the scheme. The guiding principle here is to select proposals that contribute efficiently and effectively to the objectives of the scheme. The opinion of the Advisory Committee on the submitted proposals is weighted heavily.

The Advisory Committee always gives an opinion on the application of the ground for rejection in Section 8 preamble and (b)(2), namely whether there is sufficient confidence that the activities in phase B will directly or indirectly make a positive contribution to the strengthening of the sustainable earning capacity. In addition, RVO may consult the Advisory Committee because of its expertise on a particular aspect of the subsidy application, namely whether subsidy applications in phase A and phase B meet the conditions in Sections 2 and 3, and whether the costs for which a subsidy is applied for are eligible under Section 6 of the Framework Decree.

Whether financial resources are made available for investments that strengthen the sustainable earning capacity is assessed on the basis of the information provided with the application. In doing so, the Minister may seek an opinion from the Advisory Committee on a part of the grounds for rejection. The Advisory Committee will assess the application against the grounds for rejection based on the information that must be provided with the application. The main role of the Advisory Committee is the assessment of applications under Section 3(2) and (3), namely subsidy applications for projects that make a positive contribution to the strengthening of the sustainable earning capacity (phase B). An opinion of the Advisory Committee is mandatory on the ground for rejection that an application is rejected in case of insufficient confidence in contributing to the strengthening of the sustainable earning capacity.

The opinion of the Advisory Committee states that there is sufficient confidence or insufficient confidence in a project proposal. In the latter instance, the Minister may decide to grant a subsidy.

#### **4. Implementation and enforcement**

RVO provides the subsidies by mandate on behalf of the Minister of the Interior and Kingdom Relations. RVO was involved in the development of this scheme and considers it feasible. The RVO officials in charge of supervision have the supervisory powers under Title 5.2 of the Awb, with the exception of Sections 5:18 and 5:19.

#### **5. Financial consequences**

The funds for this subsidy scheme are released from the Dutch National Growth Fund of which the Minister of Economic Affairs and Climate Policy and the Minister of Finance are fund managers. For Aruba, Curaçao, and St. Maarten, an amount of €100 million is made available<sup>2</sup>. For Bonaire, St. Eustatius, and Saba an amount of €30 million is made available<sup>3</sup>.

The implementation of the subsidy scheme by RVO involves implementation costs. The extent of these costs will not exceed 10% of the funds made available from the Dutch National Growth Fund.

The available funds are distributed among the islands according to the Donner norm. This means that one half of the available amount is distributed in proportion to the number of inhabitants per island and the other half in proportion to the number of islands. This means that for Aruba, Curaçao, and St. Maarten, a total of €90 million is available for subsidies after deduction of the implementation costs. Per island, this amounts to an amount available for the provision of subsidies totalling €31,163,999.99 for Aruba, €32,382,999.99 for Curaçao, and €21,452,999.99 for St. Maarten.

On 24 May 2024, the State Secretary for Kingdom Relations and Digitalisation, the Minister for Climate and Energy and the Minister of Economic Development of Curaçao signed an outline agreement that regards cooperation in the realisation of the hydrogen chain in Curaçao. To contribute to this, €5 million has been made available for this project from the funds available for this scheme. Therefore, in this subsidy scheme €5 million less is available for the distribution of the subsidy threshold for Curaçao.

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<sup>2</sup> *Parliamentary Papers II 2022-23*, 36 200 IV, no. 89, p. 3.

<sup>3</sup> *Parliamentary Papers II 2022-23*, 36 200 IV, no. 89, p. 5.

For Bonaire, St. Eustatius, and Saba, a total of €27 million is available for subsidies after deduction of the implementation costs. Per island, this amounts to an amount available for the provision of subsidies totalling €15,555,150 for Bonaire, €6,010,650 for St. Eustatius, and €5,434,200 for Saba.

## **6. Evaluation**

[PM]

## **7. Internet consultation**

[PM]

## **8. State aid**

Aruba, Curaçao, St. Maarten, Bonaire, St. Eustatius, and Saba have the status of Overseas Countries and Territories (hereafter referred to as: OCT). As a result, the European rules on state aid are not applicable to Aruba, Curaçao, St. Maarten, Bonaire, St. Eustatius, and Saba, nor to businesses operating economically there. What is important here is that the subsidy is actually spent on activities on the islands with OCT status. This is guaranteed in the scheme by including that the subsidy can only be used for businesses established in Aruba, Curaçao or St. Maarten or on Bonaire, St. Eustatius or Saba that use the subsidy for activities there.

## **9. Regulatory burden**

The Advisory Board on Regulatory Burden (ATR) did not select the file for a formal opinion, as it is not expected to have a significant impact on the regulatory pressure.

## **10. Entry into force**

The order takes effect on Bonaire, St. Eustatius, and Saba on 1 January 2025.

Entry into force of the order in Aruba, Curaçao, and St. Maarten will be by decree of the Minister. The governments of Aruba, Curaçao, and St. Maarten must agree to the scheme in order for it to enter into force and then be implemented. The reason is that this subsidy scheme looks at an autonomous matter of the countries. Therefore, the Netherlands cannot open up the scheme without agreeing on the implementation of the scheme. This will require a mutual arrangement with each of the countries of Aruba, Curaçao, and St. Maarten. The mutual arrangement to be agreed is free of form. The aim is to establish the explicit consent of the country concerned before taking the entry into force decision. This means that the time of entry into force may vary from country to country.

## **II. SECTION BY SECTION**

### **Section 2**

See paragraph 1 of the general part of the explanatory memorandum in this regard.

### **Section 3**

This section lays down the scope of the scheme and determines who can apply for subsidies. The first subsection regulates that subsidies can be provided for activities in preparation of a subsidy application that make a positive contribution to the strengthening of the sustainable earning capacity as enabled in the second and third subsections. This will allow potential applicants to investigate the economic and technical feasibility of a potential project proposal and enlist support so that a subsidy application for a project proposal pursuant to the second subsection can ultimately be elaborated and submitted.

The second subsection shows what themes the activities to be subsidised in phase B should focus on, namely: the mitigation of the effects of climate change and shaping the energy transition, the strengthening of the quality of education and the improvement of the educational infrastructure, the improvement of the digital infrastructure of the government, and the strengthening of the public services to citizens and businesses, the improvement of the basic infrastructure, the improvement of the cost efficiency in the food production, or the sustainabilisation of economic sectors.

The third and fourth subsections of the section provide that natural persons and legal entities under private law residing or established on one of the islands and running a business can submit a subsidy application. The application for phase B can also be submitted by a consortium of private legal entities or natural persons running a business on one of the islands.

The fifth subsection provides that a subsidy can be granted to a participant of a consortium. A consortium does not need to consist solely of participants who are all applicants for subsidies under this scheme.

### **Section 4**

This section regulates a mandatory consultation process in which potential subsidy applicants receive early advice on their potential subsidy application by applying for a quick scan. See paragraph 3.2 of the general part of the explanatory memorandum in this regard.

### **Section 5**

This section sets the subsidy thresholds for each island, determines their method of distribution, and regulates the application period.

As explained above in paragraph 5, the available subsidy ceiling of €90 million will be divided between Aruba, Curaçao, and St. Maarten and the available subsidy ceiling of €27 million will be divided between Bonaire, St. Eustatius, and Saba. As mentioned, half of the available amount will be distributed in proportion to the number of inhabitants per island, whilst the other half will be distributed proportionally among the three islands.

If on 1 January 2028 the available financial resources for one of the islands have not been used then the mutual distribution of the subsidy threshold between Aruba, Curaçao, and St. Maarten and between Bonaire, St. Eustatius, and Saba, respectively, will lapse. This means that the remaining financial resources in the subsidy threshold will become available for applications from Aruba, Curaçao, and St. Maarten, and for applications from Bonaire, St. Eustatius, and Saba, respectively.

In addition, this section regulates that applications are assessed in order of receipt. See paragraph 3.3 of the general part of the explanatory memorandum for more in this regard.

Finally, subsidy applications for project proposals that strengthen the sustainable earning capacity can be submitted at the latest on 30 June 2029 at 17:00 UTC -4.

### **Section 6**

This section regulates the information requirements for a subsidy application in phase A. The applicant must provide the information on the basis of which a decision can be taken on whether to grant a subsidy.

This refers to the phase in which the applicant clarifies what studies will be carried out into the technical and economic feasibility of the intended project proposal. The aim of these studies is to arrive at a vision for the strengthening of the sustainable earning capacity and a concrete plan for the implementation of the activities to achieve that outcome. Based on the local findings of this feasibility study, the applicant will determine what activities can be undertaken and what measures can be taken on location in order to strengthen the sustainable earning capacity. Actions are also formulated for structural embedding of the measures so that a long-term effect can be achieved. It then determines what capacity is already in place for this purpose and in what area capacity needs to be strengthened at the businesses concerned. For the activities in phase A, see also paragraph 3.3 of the general part of this explanatory memorandum.

If the activities in phase B will be carried out by a consortium then a description of the proposed participants and their roles will be provided.

Phase A concludes with an elaborated application for phase B that either implements the activities in the project proposal or concludes that a subsidy application for phase B is not appropriate. Logically, it will only come to an elaborated application for phase B if the technical and economic feasibility of the activities to be carried out in phase B is (sufficiently) demonstrated and there is confidence that it will come to subsidy granting in phase B. An applicant will not want to submit a subsidy application for phase B for a project where it is clear in advance that it is not feasible.

## **Section 7**

This section regulates the information requirements for a subsidy application in phase B. The applicant must provide the information on the basis of which a decision can be taken on whether to grant a subsidy. The completeness of an application is determined on the basis of these information requirements. They reflect the minimum information required before processing of an application can commence. These include the description and substantiation of the contribution of the proposed activities, directly or indirectly, to the strengthening of the sustainable earning capacity, the strategic substantiation of the activities, and the content of the plan of activities. This includes, in particular, the contribution of the activities to the strengthening of the sustainable earning capacity, their realisation during and after the project, and the effectiveness and efficiency of the proposed activities.

## **Section 8**

Section 8 contains the grounds for rejection. The activities for which subsidy is applied for must meet the requirements set out in the subsidy scheme. The applicant must have submitted a complete subsidy application and completed a compulsory advisory process based on a quick scan in phase A or phase B. The activities for which subsidy is requested should fit within the purpose of the subsidy scheme and contribute to the strengthening of the sustainable earning capacity. The investments must not be structural in nature, must contribute to the purpose of the scheme, have a positive balance of social benefits and costs, and not conflict with government policy of the country concerned. Investment should further be additional to private investment and to existing or planned public investment. In a nutshell, this means that financial resources under the scheme should only be deployed where there is a market failure, preventing a proposal with funding from the market alone from materialising, and where the investment does not fall within an existing government funding instrument.

A maximum is set for the activities in phase A. For the performance of studies into the technical and economic feasibility of the intended activities in phase B and the preparation of a subsidy application for them, a maximum of €300,000 is granted for activities in Aruba, Curaçao, and St. Maarten and a maximum of €100,000 for activities in Bonaire, St. Eustatius, and Saba.

To ensure that the contributions from the scheme will have a substantial impact on the sustainable earning capacity, a minimum scope of activities in phase B is set. In Aruba, Curaçao, and St. Maarten, the scope of the activities in phase B should be at least €6,000,000 and in Bonaire, St. Eustatius, and Saba at least €2,000,000. For activities in phase B that address the improvement of the cost efficiency in the food production, a lower limit of at least €2,000,000 applies to both Aruba, Curaçao, and St. Maarten and Bonaire, St. Eustatius, and Saba.

No subsidy is granted to a participant in a consortium if the subsidy to be granted would be less than €125,000.

**Section 9**

See paragraph 3.5 of the general part of the explanatory memorandum in this regard.

**Section 10**

Section 10 states that the subsidy recipients receive advances. These are provided ex officio.

**Section 11**

Section 11 contains the obligations for the subsidy recipient, which are additional to the obligations in Section 21 of the Framework Decree. The main obligation follows from the aforementioned section of the Framework Decree, namely that the activities must be carried out in accordance with the plan of activities.

**Section 12**

The order takes effect on Bonaire, St. Eustatius, and Saba on 1 January 2025. After Aruba, Curaçao, and St. Maarten have agreed to implement the scheme, the scheme will enter into force at a time to be determined by ministerial decree. See paragraph 10 of the general part of the explanatory memorandum for more in this regard.

The scheme expires on 1 January 2030 and continues to apply to subsidies and subsidy applications issued or applied for before 30 June 2029.

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*Digitisation and Kingdom Relations*

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