

Amendment to the Financial Markets Regulation BES 2012 (relieving the seat requirement for credit institutions on St Eustatius and Saba)

Regulation of the Minister of Finance of 2025-0000000000, amending the Financial Markets Regulation BES 2012 (relieving the seat requirement for carrying on the business of a credit institution on St Eustatius and Saba)

THE MINISTER OF FINANCE,

Having regard to Article 3:1(2) of the BES Financial Markets Act;

DECISION:

ARTICLE I

The following article is added to paragraph 1 of the **Financial Markets Regulation BES 2012**:

Article 1.7 (State of registered office of credit institutions Sint Eustatius and Saba)

Credit institutions may also have their registered office in the European part of the Netherlands if they exercise the business of a credit institution from a branch on Sint Eustatius or Saba and the exercise of the business of a credit institution from that branch is limited to Sint Eustatius and Saba.

ARTICLE II

This Arrangement shall enter into force on [1 July 2025].

This regulation will be published in the Government Gazette together with the explanatory notes.

THE MINISTER OF FINANCE,

EXPLANATORY NOTE

General

1. Introduction

The purpose of this regulation is that credit institutions with a registered office in the European part of the Netherlands can carry on the business of a credit institution on Saba and Sint Eustatius from a branch office on Saba or Sint Eustatius. With this reduction of the seat requirement, the entry barrier to the financial markets of Saba and St. Eustatius is lowered for these institutions, which allows an integral improvement of the offer of banking services on Saba and St. Eustatius. It is explained below why this is necessary and proportionate.

2. Reason for and scope of the scheme

Offering of banking services on Saba and St. Eustatius

The banking services on Saba and St Eustatius have not met the social expectations and the lower limit of the Ministry of Finance for banking services within the Caribbean Netherlands for some time. This hinders opportunities for individuals and companies to participate in society, as is possible in the European part of the Netherlands. External research confirms findings of the Ministry of Finance and the Dutch Central Bank (DNB) that this not only leads to complaints, but also hinders the economic growth of the tourism industry on Saba and St. Eustatius and the social development and self-development of their inhabitants.¹ For example, entrepreneurs face high fees for payments to suppliers outside the BES islands, and consumers face obstacles in accessing basic financial services, making internet purchases and renewing bank cards.

Only one bank per island is physically present on both Saba and St. Eustatius. The development of digital banking services is lagging behind (in relation to the European part of the Netherlands), which perpetuates the dependence on more traditional banking services. On St Eustatius, the range of services is at most reasonable, but there are, among other things, long waiting times, unstable availability of cash and limited customer service. On Saba, the market is not functioning properly; citizens have to wait months to open an account. Inhabitants of Saba experience many problems with renewing bank cards and the costs for transactions within and especially outside Saba are very high, also according to regional standards.

Market conditions financial markets Saba and St Eustatius

There is a market failure in the financial markets of Saba and St Eustatius. Research by both the Ministry of Finance and DNB and that of external parties shows that it is practically impossible to create a sustainable and profitable *business case* there.² This is mainly due to the limited market size and physical location of Saba and St. Eustatius.

Banking activities on Saba and St Eustatius are mainly aimed at private individuals, tourism and local small and medium-sized enterprises (SMEs). The small size of the population,³ limited number of consumers, and the number of associated business customers do not

¹ See: *Parliamentary documents II 2018/19*, 32 013, No 214 (Annex: Summary of the PwC report – Investigation into banking services in the BES islands (hereinafter: 'PwC report summary'); and *Parliamentary Papers II 2024/25*, 32 013, No 305 (Annex 1 – Research Report E.W. Groenevelt, 'Exploring possibilities for improving banking services on the BES islands', April 2024) ('the following: External exploration of the improvement of banking services in the BES islands).

² See: Summary PwC report and External exploration of improvement in banking services BES islands.

³ Bonaire has approximately 24,000 inhabitants, Sint Eustatius approximately 3,300 and Saba approximately 2,000. The country of Curaçao has about 150,000 inhabitants and the country of Sint Maarten about 50,000.

provide sufficient scale to recoup the necessary investments⁴ in banking services.⁵ Qualified banking staff on Saba and St Eustatius are also limited, which further complicates the opening of physical locations.

Additional complexity is that payments on Saba and St. Eustatius are often made in cash.⁶ This increases the costs of the payment system and hampers the growth of the local economy, as it is operationally demanding to get cash available in sufficient quantities and on time.

Initiatives to ensure the sustainability of banking services

The market conditions on Saba and St Eustatius mean that banking services cannot be offered in a profitable way there, which prevents (possibility of) improvement. As a result, the continuity of banking services on Saba and St Eustatius is regularly under pressure and is currently insufficiently durable. This calls for a swift and sustainable solution.

That is why the Ministry of Finance, together with DNB, has been looking for solutions to improve banking services on Saba and St. Eustatius across the board for some time now. There is a certain dependence on the willingness of the private sector. In recent years, research has been conducted and solutions discussed with (local) banks, other market parties and the public bodies Saba and Sint Eustatius. Various forms of government intervention have been explored, amongst which a service agreement with a (local) bank, including a government contribution that could compensate for the unprofitable peak of the provision of banking services.⁷ Unfortunately, for various reasons, such initiatives have not been successful.

Scope of the measure

The market failure on Saba and St Eustatius raises the question of which barriers to entry stand in the way of a solution and can be lowered in order to make it possible to improve the supply of banking services on Saba and St Eustatius. The Ministry of Finance has examined this and concluded that this concerns the seat requirement for credit institutions with a seat in the European part of the Netherlands.

The seat requirement has been introduced against the background of the constitutional reform; to ensure that financial institutions already active in the Caribbean Netherlands can continue or start their activities in the public sector bodies in much the same way as before the political reform.⁸ In this way, the aim is to perpetuate the existing situation and to protect (local) financial institutions against (potential) competition from, for example, the European part of the Netherlands (which without the seat requirement could, for example, only focus on profitable activities or parts of the market, also known as *cherry picking*).

Conversations with a Dutch financial institution about why it is currently not active on Saba and St Eustatius confirmed that the seat requirement makes accession practically impossible. In order to meet the seat requirement, credit institutions with a seat in the European part of the Netherlands would have to establish a new (subsidiary) entity with a seat in the Caribbean Netherlands, Curaçao or Sint Maarten. This requires large investments, organisational actions, unnecessary administrative burdens and, as a result, higher compliance costs (which are likely to be passed on in the cost of services).

⁴ This could include costs related to: personnel, legal matters, compliance, ICT systems, licence applications, security, operational costs, risk management, financial buffers, insurance, communication and alignment of products/services in the relevant market.

⁵ *Parliamentary Papers II 2010/11*, 32 784, No 3, point 4.

⁶ It is estimated that about 80% of the transactions on Saba and St Eustatius are carried out in cash. This is partly because many salaries are still paid in cash. See: External exploration of improvement of banking services BES islands.

⁷ See, among others: *Parliamentary Papers II 2024/25*, 36 600 IV, No 51.

⁸ *Parliamentary Papers II 2010/11*, 32 784, No 3, point 3.1.

In the light of the foregoing, it has been decided that credit institutions are also permitted to have a registered office in the European part of the Netherlands if they carry on the business of a credit institution from a branch on Sint Eustatius or Saba and the exercise of the business of a credit institution from that branch is limited to Sint Eustatius and Saba. This reduction of the seat requirement does not apply to Bonaire because the financial market there has a healthy degree of competition and the bank penetration is at a good level in relation to the number of inhabitants and companies. Moreover, there are few problems on Bonaire in terms of both logistics and advisory capacity. This has to do with the fact that Bonaire has a significantly larger population than Saba and St. Eustatius and lies at a relatively short distance from Curaçao, where banks active on Bonaire have a larger branch.⁹ Therefore, there is no market failure that would justify a reduction of the seat requirement for Bonaire. In fact, this could be disruptive by undermining the competitiveness of local banks and potentially fuel *cherry picking*.

Article by Article

ARTICLE I

This article provides for a relief in the seat requirement of article 3:1(1) of the Financial Markets Act BES (hereinafter: "Wfm BES"), which allows credit institutions with a registered office in the European part of the Netherlands to exercise the business of credit institution on Saba and Sint Eustatius from a branch office on Sint Eustatius. These branches are subject to the same rules for their activities on Saba and St. Eustatius as branches located in Bonaire, St. Maarten and Curaçao. They should apply for the same branch authorisation, subject to the same substantive requirements and, once authorised, subject to the same rules (including prudential requirements and market conduct provisions). They must also be authorised to carry on the business of a credit institution in the state in which they have their registered office and the same presumption of proof applies with regard to prudential requirements (the requirements applicable to them under articles 3:16 to 3:19 of the Wfm BES) as to branches of other foreign financial undertakings.¹⁰ Finally, like other branches, they are obliged to participate in the Caribbean Netherlands Deposit Guarantee Scheme for deposits they hold on Saba and St. Eustatius.¹¹

ARTICLE II

Before the entry into force of this regulation, which will enter into force on 1 July 2025, the fixed change dates have been adhered to.

THE MINISTER OF FINANCE,

⁹ External exploration of improvement of banking services BES islands.

¹⁰ Pursuant to Section 3:2 of the Financial Markets Act BES.

¹¹ After obtaining the authorisation to carry on the business of a credit institution, they will not (also) participate in the deposit guarantee scheme for the European part of the Netherlands on the basis of Section 4:17 of the Wfm BES and Section 29.01(1)(a) of the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantee Wft.