

Intervention in St Eustatius

A case study in the Accountability Audit of Kingdom Relations

17 mei 2023



The Dutch government intervened in the administration of St Eustatius in 2018. Under the Temporary Act on Neglect of Duty in St Eustatius, a Government Commissioner was appointed after an advisory committee spoke of gross neglect of duty by the island administration (BZK, 2018).

The act had an end date of 17 March 2021 but more time was needed to restore local democracy in St Eustatius. The St Eustatius Provisions Restoration Act accordingly came into force on 16 July 2020 in order to extend the intervention. The measures ensuing from the intervention have still not been completed.

1 4 problems restoring local democracy

The conditions required to restore local democracy in St Eustatius had not been fulfilled at the end of 2022. Essential services are not yet sustainable. We consider this in more detail in the following sections, beginning with a brief sketch of the situation and the phases of the return to local democracy (§ 1.1).

At the end of 2022 the State Secretary for Kingdom Relations said she intended to return the right to approve the budget to the public body St Eustatius before all the conditions of the St Eustatius Provisions Restoration Act had been demonstrably fulfilled (phase 2.2) (§ 1.2).

Secondly, the Island Council and the Government Commissioner do not always exercise their roles or apply regulations correctly (§ 1.3).

Thirdly, we recognise that a small island like St Eustatius, with a population of about 3,000, will have capacity problems. It is difficult to find enough suitable people for all aspects of administration and financial management, people who understand the local situation and have the appropriate training and experience (§ 1.4).

Finally, the special-purpose grants awarded to St Eustatius have increased but a large proportion has still not been spent (§ 1.5). Moreover, little account is taken of the recurring cost of improvements funded from special-purpose grants.

We completed our audit in February 2023.

1.1 From intervention in 2018 to phased return to local democracy

The House of Representatives passed the Temporary Act on Neglect of Duty in St Eustatius on 7 February 2018. This marked the beginning of the Dutch government's intervention in St Eustatius. The then State Secretary for Kingdom Relations thought the intervention would last no more than 2 years. The intervention had 2 objectives: to restore local democracy and to tackle economic, ecological and social problems. On completion of our audit, nearly 5 years after the start of the intervention, local democracy had still not been fully restored.

The tasks and powers of the former Island Council and Island Executive were assumed by a Government Commissioner and a deputy Government Commissioner appointed by and reporting directly to the state secretary. The intervention has been downscaled with the election of an Island Council and the appointment of Island Commissioners. However, they have not recovered all their powers.

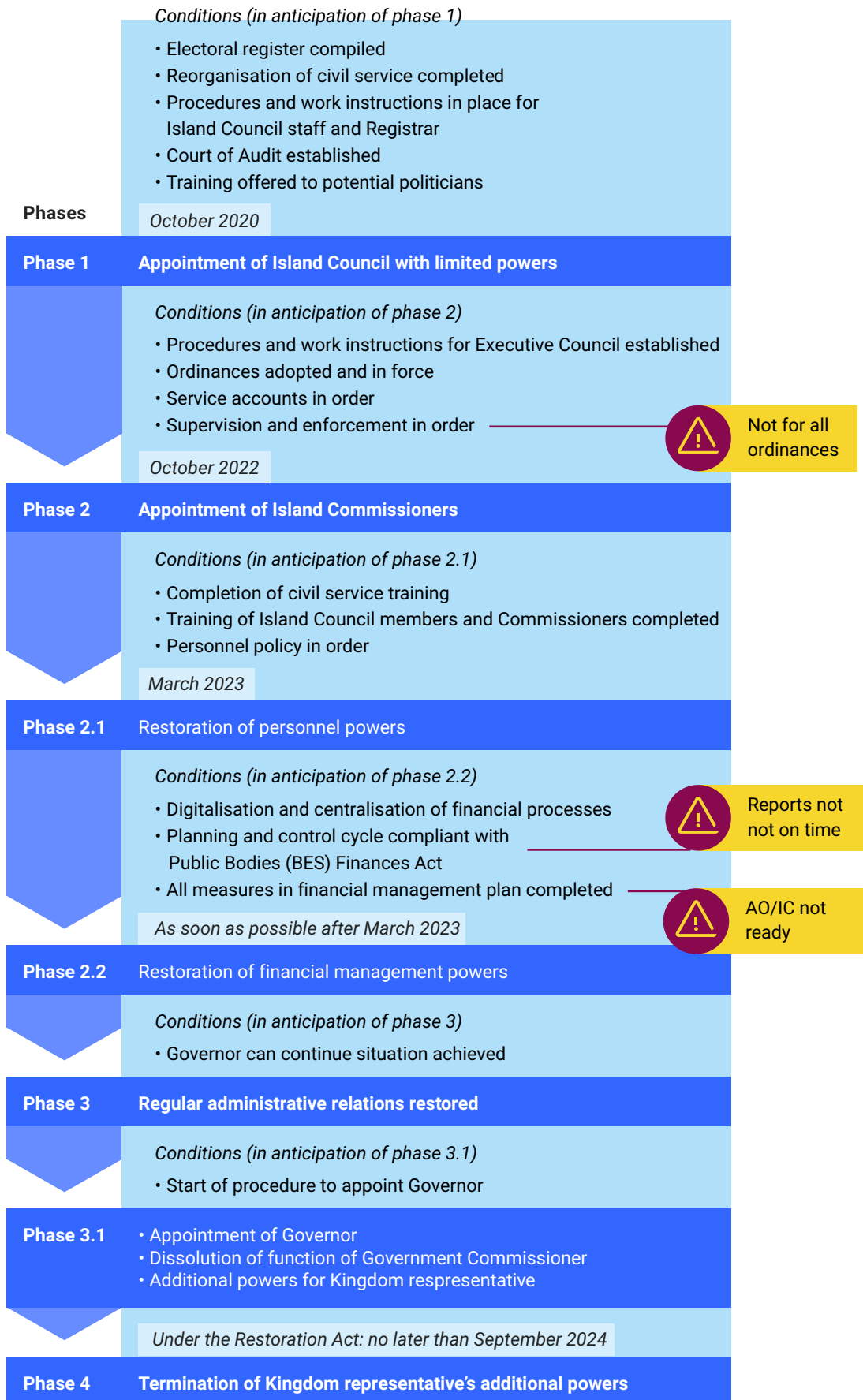
Phased restoration of local democracy

The state secretary must ensure that all conditions of the Temporary Act on Neglect of Duty in St Eustatius are fulfilled before the intervention can be ended. She is working closely with the Island Council and the Executive Council, which will re-assume authority on completion of the intervention. The restoration consists of 4 primary phases and several secondary phases. A new phase commences when the conditions of the previous phase have been fulfilled. During our audit (October 2022 to the end of February 2023) the process of restoring local democracy had advanced to phase 2 but the state secretary was already working on legal procedures to commence phase 2.1 and phase 2.2.

Figure 1 shows the conditions that must be fulfilled to commence each phase, as well as the status of several conditions at the end of 2022.

Figure 1 Phases, conditions and progress on the road back to local democracy

Several phases have commenced without all conditions being fulfilled



Not all necessary conditions are met at start of new phase

To ensure that the local administration can exercise its powers appropriately when the intervention ends, the act includes conditions that the public body St Eustatius must fulfil. Phases 1 and 2 have already commenced even though some preliminary conditions have not yet been fulfilled.

The transition to phase 2, for instance, requires the revision, adoption and implementation of all island ordinances. Ordinances are local interpretations of legal frameworks essential for the proper functioning of local democracy. They range from tax rules and local licences to traffic regulations.

The state secretary reported that 86 ordinances had to be revised but poor record keeping meant it was uncertain precisely how many ordinances still had to be revised. Furthermore, despite the formal and timely adoption of ordinances, not all of them had been implemented. The last 4 of the reported 86 ordinances were formally adopted on 27 September 2022, one day before the planned transition to phase 2. The Government Commissioner still had to render decisions on the implementation of ordinances. The ordinances' statutory supervision and enforcement, moreover, were not regulated when phase 2 commenced.

Example: supervision and enforcement not in order

The Road Traffic Ordinance was the last ordinance to be adopted. Its rules on the use of alcohol cannot be enforced because there are no breathalysers on the island and officers have not been trained in their use.

1.2 Intention to restore the right to approve the budget

The state secretary informed the House of Representatives at the end of 2022 that she intended to return the administrative powers to the Island Council and Executive Council as soon as possible. This is phase 2.2 of the intervention. The right to approve the budget would be returned to the Island Council, and financial powers would be returned to the Executive Council. In effect, this would end the intervention as the Government Commissioner would no longer have any meaningful powers. To enter this phase, financial management and the planning and control cycle conditions had to be in order.

The state secretary based her intention to restore the right to approve the budget on the findings of an audit of public body St Eustatius's financial management that she had commissioned from Ernst & Young Curaçao (BZK, 2022b). At the end of 2022,

the state secretary also said she would need to reach an agreement with St Eustatius's Island Council and Executive Council regarding their commitment to fulfil the statutory financial management conditions (BZK 2023a).

One condition of the St Eustatius Provisions Restoration Act for the restoration of the right to approve the budget, however, is that finances must demonstrably comply with the provisions of the Public Bodies (BES) Finances Act. At the beginning of 2023, we concluded that financial management was not sustainable and the planning and control cycle was not in order.

Financial management not yet sustainable

The Island Council and Executive Council must be able to execute their tasks and powers correctly and in accordance with the Public Bodies (BES) Finances Act (FinBES). Their tasks and powers include the preparation and design of the budget and financial statements, financial management and financial control. Under the FinBES, the Financial Supervision Authority (Cft) is responsible for supervision. The audit Ernst & Young Curaçao carried out for the state secretary at the end of 2022 concluded that the administrative organisation and internal control system had not been adequately analysed, designed and implemented to audit all relevant aspects of the system. The audit scope was therefore scaled down and an advisory report was issued instead of an audit report. The advisory report set out the steps that had to be taken to arrive at an adequate administrative organisation and internal control system in order to audit compliance.

The advisory report contains 27 successive steps to raise the administrative organisation and internal control system to an acceptable level. Implementation of these steps will not be completed until September 2023 at the earliest. Cft thought the advisory report's emphasis on the administrative organisation and internal control system overshadowed other measures to improve financial management, such as strengthening the budget cycle and risk management (Cft, 2023).

Planning and control cycle not yet in order

The state secretary wrote to the House at the beginning of 2023 that all reports in 2022 had been prepared correctly and on time in accordance with the FinBES (BZK, 2023a). We came to a different conclusion: the 2021 annual report, the 3 quarterly reports due for publication in 2022 and the draft budget for 2023-2026 (Cft 2022a, b, c, d) were not prepared on time. The planning and control cycle did not comply with the FinBES in 2022. In consequence, leaving less time to adjust.

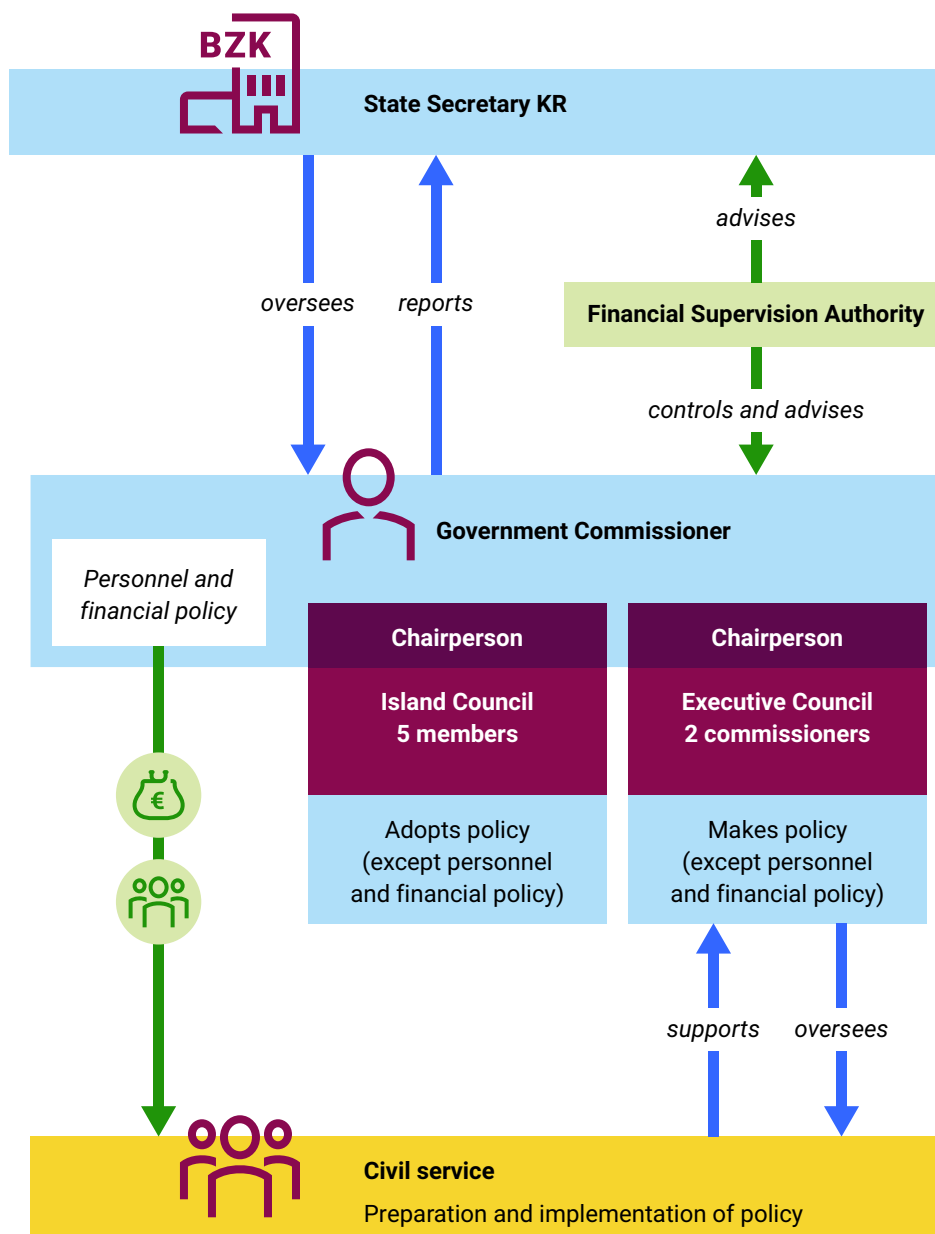
1.3 Government Commissioner and Island Council do not exercise their roles and powers correctly

Neither the Government Commissioner nor the Island Council exercises its role and powers correctly. The agreed checks and balances of power and countervailing power therefore do not work correctly. This is not conducive to rebuilding the trust necessary for smooth and effective cooperation between the Government Commissioner and the Island Council.

Figure 2 shows administrative relations on completion of our audit at the beginning of 2023.

Figure 2 Administrative relations in St Eustatius in phase 2

Administrative relations of the Government Commissioner in phase 2



Role of the Island Council

The St Eustatius Provisions Restoration Act and the Public Bodies (Bonaire, St Eustatius and Saba) Act (WOLBES) lay down the tasks and powers of parties concerned, including those of the Government Commissioner and the Island Council. Our audit found that the Island Council wanted to be involved in policy implementation instead of solely setting the framework and overseeing policy implementation, which are its tasks as the island's representative body. The Island Council would be more effective if it concentrated, in the public interest of all Stadians, on its roles of setting frameworks and overseeing the Executive Council.

Example: Nature Ordinance

This is illustrated by the Island Council's handling of the Nature Ordinance. The Nature Ordinance relates, among other things, to the response to stray cattle, the development of agriculture and rights to fish Conch, an endangered sea snail. These are sensitive issues on St Eustatius with conflicting economic and ecological interests. In autumn 2022, the Island Council rejected the proposed Nature Ordinance because a majority of the Council wanted to influence its implementation. The resultant administrative stalemate meant earlier nature ordinances, dating from 1966 and 1996, were not been repealed. The stance taken by the Island Council has further delayed the resolution of ecological problems.

Example: budget process

There have been problems adopting the budget due to various parties' exercise of their tasks and powers. The Government Commissioner did not adhere to the schedule or procedures laid down in the FinBES and the St Eustatius Provisions Restoration Act. The draft budget, for instance, was not made public with the Cft's advisory report. The Island Council thought the agreements made with the state secretary gave it the right to decide on the draft budget. However, the Island Council was not competent to decide on the draft budget (including the right of approval) because financial task and powers had not been returned to it. The Island Council and Government Commissioner interpreted the meaning of co-decision-making on the budget differently. Our audit concluded that none of the parties in the draft budget process exercised its tasks and powers correctly. This resulted in an inadequate use of the system of checks and balances. This weakened an already fragile relationship.

To break the stalemate, the budget adopted for 2023-2026 was placed back on the agenda on 9 February 2023, the Council followed the appropriate procedure, the Government Commissioner provided an explanation of the Cft's advisory report and the Island Council asked substantive questions.

1.4 Problems due to limited capacity

A small island like St Eustatius with a population of about 3,000 constantly has capacity problems. They are felt in many areas, including the completion of projects and the implementation, application and enforcement of ordinances. Last year we recommended that the Minister of BZK recognise the restraints on public administration due to St Eustatius's small size and limited capacity. The intervention represents a major step forward in the professionalisation and organisation of the civil service, but vacancies remain difficult to fill.

Small public body with big responsibilities

St Eustatius has an oil terminal, an airport and a seaport, infrastructure that the European Netherlands has at only large cities such as Amsterdam and Rotterdam. The activities require very versatile personnel. St Eustatius's civil servants are tasked with a wider portfolio than municipal civil servants in the European Netherlands. Its legal advisers, for instance, also revise ordinances, contact the ministries to discuss new legislative proposals and deputise for the judge in the criminal court.

Lack of capacity to restore local democracy

High demands are made on the capacity necessary to restore local democracy and tackle economic, ecological and social problems. In St Eustatius's small labour market (total population of about 3,000), the necessary expertise is limited. It is open to question whether the government's expectations regarding the timing and resources to improve local administration are realistic. Revising the 86 ordinances (a condition to enter phase 2), for instance, significantly increased the workload on St Eustatius's civil servants. The capacity available to implement and enforce the revised ordinances is also inadequate. Apart from human resources, there are not enough technical resources, such as vehicles, computers, printers, walkie-talkies and specialised equipment (including breathalysers, as mentioned above).

1.5 Increase in special-purpose grants but large proportion not yet spent

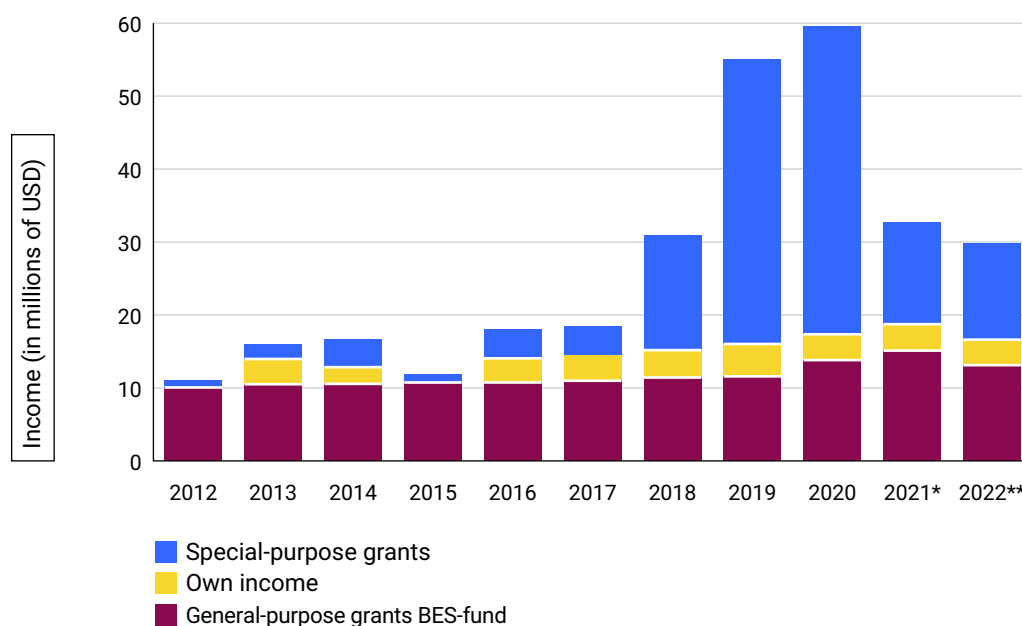
The special-purpose grants awarded to St Eustatius have increased but a large proportion of them has not yet been spent.

Development: increase in special-purpose grants

The public body St Eustatius has 3 sources of income: its own income, general-purpose grants from the BES-Fund and special-purpose grants for named projects. The special-purpose grants awarded to St Eustatius have increased enormously since the intervention. This is not exclusive to St Eustatius but follows a trend also seen in Saba and Bonaire that we reported on earlier in *Special-purpose Grants Awarded to the Caribbean Netherlands* (Netherlands Court of Audit, 2021). Figure 3 compares special-purpose grants, own income and general-purpose grants with each other. Figure 3 is denominated in US dollars, the currency used on the island.

Figure 3 Sources of St Eustatius's income (in millions of USD)

Significant increase in special-purpose grants



* In 2021, additional general-purpose grants were awarded to offset the fall in income due to the COVID-19 crisis, inflation and social policy

** Including CN envelope (according to the 4th implementation report 2022)

Large proportion of grants not yet spent

Of the USD141 million in special-purpose grants awarded to St Eustatius since 2010, USD73 million had not been applied by the end of 2022. The reasons for this include:

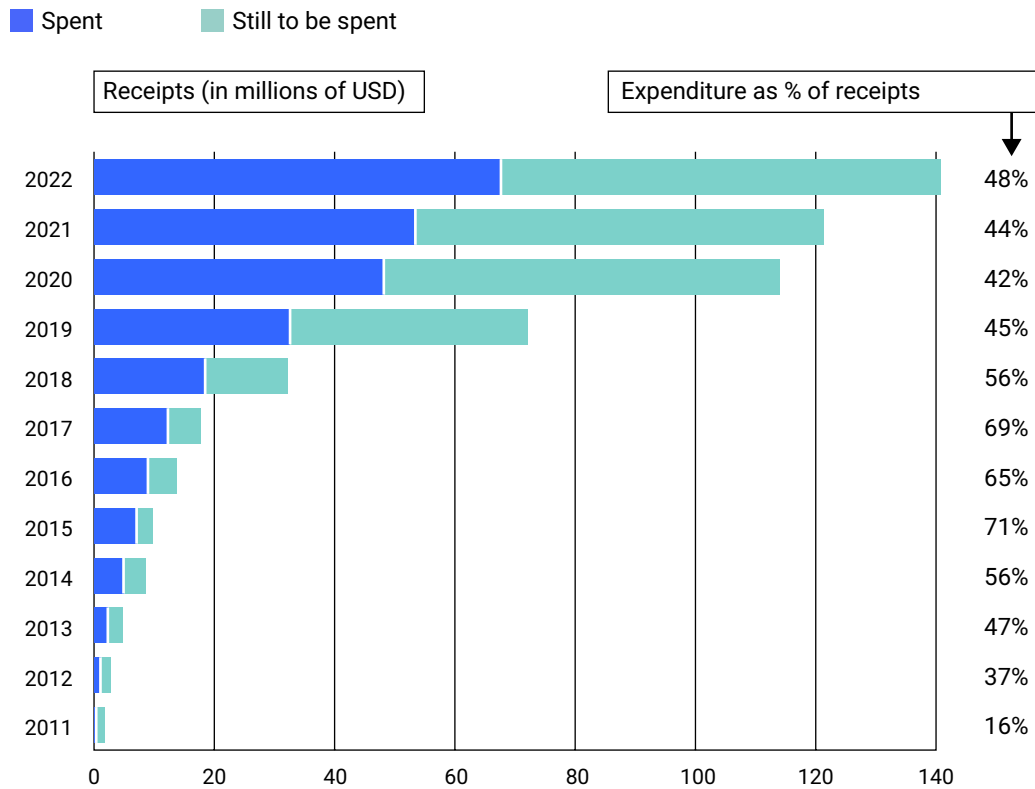
- lack of consideration for the island's limited capacity,
- expenditure on multiyear projects is spread over several years.

In addition, sound financial management is lacking and project accounts are not kept correctly. In 2022, delays in the implementation of individual projects could not be explained. This is one of the points for improvement in the financial management action plan.

Figure 4 shows that expenditure has not kept pace with the increase in special-purpose grants since St Eustatius became a public body on 10-10-10.

Figure 4 Aggregate receipt and expenditure of special-purpose grants

Special-purpose grants have increased significantly since 2010 but less than half has been spent in recent years



The special-purpose grants include the intervention costs incurred by Ministry of BZK. The intervention has cost €10.3 million since 2018 and amounted to €1.9 million in 2022. It is difficult to separate the intervention cost from the project costs in 2022.

This finding is consistent with our earlier audit of special-purpose grants awarded to the Caribbean Netherlands (Netherlands Court of Audit, 2021). It concluded that the financial relationship between central government and the public bodies was distorted by the substantial increase in earmarked special-purpose grants as a proportion of the public bodies' total income. Furthermore, the Ministers of BZK and Finance did not have an overview of or insight into the special-purpose grants that the government had awarded to the public bodies.

We conclude, as we had in 2021, that St Eustatius little allowance is made for the recurring cost to St Eustatius of improvements funded from special-purpose grants. Maintenance and sustainment costs are paid from the general-purpose grant, yet the

general-purpose grant has not been increased to cover these costs. Owing to the absence of a thorough analysis of one-off and recurring costs and benefits, there is a risk that new problems will arise.

Further to the Van den Berg and Ceder motion (2021), the Ministry of BZK has launched an investigation of the BES islands' tasks, costs and finances. It will subsequently investigate the options available to keep the general-purpose grant up to date in years to come. The state secretary is planning to inform the House of the results in the summer of 2023 (BZK, 2023b).

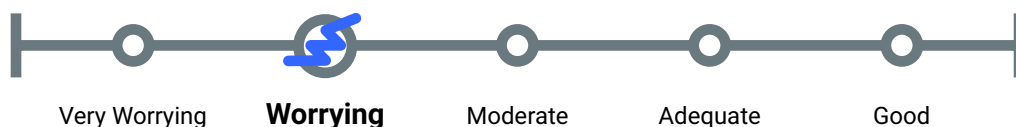
2 Opinion on policy outcomes

The problems outlined above are a source of risk. Not all statutory conditions for the restoration of local democracy on St Eustatius had been met at the end of 2022. The state secretary said at the end of the year that she intended to return the right to approve the budget to the Island Council and Executive Council. We also found that the Island Council and the Government Commissioner did not exercise their roles and powers correctly. To restore local democracy and tackle economic, ecological and social problems, they should strictly adhere to their roles and powers; the necessary expertise available to the island, however, is limited. Finally, we conclude, as we had in 2021, that St Eustatius is given little allowance for the recurring cost of improvements funded from special-purpose grants. Maintenance and sustainment costs are paid from the general-purpose grant, but the general-purpose grant has not been increased. Owing to the absence of a thorough cost-benefit analysis, there is a risk of new problems arising.

Our audit investigated whether the minister's policy met applicable criteria. Our opinion is based on a five-point scale of Good, Adequate, Moderate, Worrying and Very Worrying. The opinion is based on the policy's efficiency and effectiveness and the resultant outcomes for citizens and businesses in the light of the policy's social consequences and whether the government had to overcome an unexpected crisis.

In our opinion, the policy pursued for the intervention on St Eustatius is worrying.

Opinion



Appendix: references

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Wet- en regelgeving

Wet financiën openbare lichamen Bonaire, Sint-Eustatius en Saba (FinBES). Wet van 30 september 2010, houdende regels met betrekking tot de financiële functie van de openbare lichamen Bonaire, Sint-Eustatius en Saba, hun bevoegdheid tot het heffen van belastingen en hun financiële verhouding met het Rijk.

Tijdelijke wet taakverwaarlozing Sint-Eustatius. Wet van 7 februari 2018, houdende voorziening in het bestuur van het openbaar lichaam Sint-Eustatius.

Wet herstel voorzieningen Sint-Eustatius. Wet van 8 juli 2020, houdende herstel van de voorzieningen in het bestuur van het openbaar lichaam Sint-Eustatius.

Wet openbare lichamen Bonaire, Sint-Eustatius en Saba (WolBES). Wet van 17 mei 2010, houdende regels met betrekking tot de openbare lichamen Bonaire, Sint-Eustatius en Saba.

More information

More information on the strategy, work programme and all audits published by the Netherlands Court of Audit can be found at www.courtofaudit.nl. For more or other information, please contact internationalaffairs@rekenkamer.nl.

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