



# Central Government and Dutch Caribbean: fulfilment of agreements





# **Central government and Dutch Caribbean: performance of agreements**

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# Contents

	<b>Summary</b>	<b>1</b>
<b>1</b>	<b>About this audit</b>	<b>4</b>
1.1	Introduction	4
1.2	About the Dutch Caribbean	4
1.3	Object and terms of reference	7
1.4	Organisation of the report	7
<b>2</b>	<b>Legislative restraint</b>	<b>9</b>
2.1	Agreements about legislative restraint	9
2.2	Legislative restraint in education and health care	12
2.2.1	Education	12
2.2.2	Health care	13
2.3	Conclusion	13
<b>3</b>	<b>Standard of public services</b>	<b>15</b>
3.1	Agreements about the standard of public services	15
3.2	Standard of education and healthcare services	16
3.2.1	Education	16
3.2.2	Health care	19
3.3	Conclusion	22
<b>4</b>	<b>Consultation with the public bodies</b>	<b>23</b>
4.1	Agreements about consulting the public bodies	23
4.2	Conclusion	26
<b>5</b>	<b>Final observations</b>	<b>28</b>
<b>6</b>	<b>Responses by the Ministers and island executives and afterword by the Court of Audit</b>	<b>30</b>
6.1	Responses by the Ministers and island executives	30
6.2	Afterword by the Court of Audit	32



<b>Annexe 1</b>	<b>Methodology</b>	<b>34</b>
<b>Annexe 2</b>	<b>Abbreviations</b>	<b>35</b>
	<b>Literature</b>	<b>36</b>



# Summary

1

On 10 October 2010 constitutional reform took place in the Kingdom of the Netherlands. On that date the islands of Bonaire, St Eustatius and Saba became part of the Netherlands and obtained the status of public body. Central government made a number of agreements with the islands about the consequences of this constitutional reform. We have examined three of these agreements, namely those concerning:

- legislative restraint (limited introduction of legislation) after the constitutional reform;
- the level of public services;
- consultation with the public bodies about new legislation.

We have taken stock of what has been agreed about these three subjects. And in the case of two policy fields – education and curative health care ('health care') – we have examined to what extent the agreements are being fulfilled.

## *Legislative restraint*

Agreements were made between central government and the public bodies about the limited introduction of legislation during a five-year period following the constitutional reform. It is unclear from them what legislation should comply with the agreement about legislative restraint. We have therefore been unable to assess whether this agreement has been fulfilled. The government also gave a number of undertakings to the Senate about safeguards for the limited introduction of legislation. For example, it undertook to ensure that the reasons for any new or amended legislation would be explained against the background of legislative restraint. And it also agreed that bills and other draft laws that have administrative and financial consequences for the public bodies would be coordinated at interministerial level with the Ministry of the Interior and Kingdom Relations ('Ministry of the Interior'). In the case of the two policy fields we have examined – education and health care – we conclude that the undertakings have been fulfilled.

## *Level of public services*

Central government and the public bodies agreed to formulate criteria for an acceptable level of public services. For this purpose it was important to



determine the starting point for the policy field concerned. Only then would it be possible to decide what needed to be done in order to achieve the desired level of services and to assess in retrospect whether this level had been achieved. Prior to the transition (i.e. the constitutional reform) this information was not available for either education or health care. The Ministry of Education, Culture and Science ('Ministry of Education') and the Ministry of Health, Welfare and Sport ('Ministry of Health') therefore first carried out studies to determine the existing situation. Improvement plans were then drawn up on the basis of the findings.

2

The two ministries used different methods to determine the level of services ultimately desired. The Ministry of Education set out to ensure that the public bodies would have a level of services comparable to that in the European part of the Kingdom, whereas the Ministry of Health chose to determine the level for each healthcare institution separately. Target values have been formulated for the level of educational services, but the same is not yet true of all areas of health care.

#### *Consulting the public bodies*

Initially, the agreements on consulting the public bodies about new legislation were found to be insufficiently specific. For example, no agreement had been made about the response period. A six-week response period was later agreed and is for the most part now being observed. Nor were any agreements made about the stage in the legislative drafting process at which the public bodies should be consulted. The ministries concerned dealt with this in different ways: in some case a ready-made bill would be presented and in others the public bodies would be consulted at an early stage of the drafting.

Even where the agreements are observed, the public bodies are not always able in practice to give an adequate response to the proposals. This is mainly due to the quantitative and qualitative staffing problems of the public bodies. When legislation is introduced it is therefore possible that insufficient account may be taken of the specific circumstances of the public bodies.

We would note that the public bodies have generally been given the opportunity to comment on legislative proposals relating to education and health care. The correspondence shows that local administrators and their staff have raised many questions about the new legislation in these two policy fields and have also suggested numerous amendments. The Ministries of Education and Health have answered these questions and explained which suggestions have or have not been adopted and why.



In our view, it is important to determine as accurately as possible the desired level of public services in all policy fields, particularly in view of the evaluation in 2015. This has been done successfully in the education field, and we have also seen positive developments in the healthcare field. The experience gained in these fields can be put to good use in other policy fields.

*Response by the Minister and afterword by the Court of Audit*

The Minister of the Interior, who also wrote on behalf of the Ministers of Education and Health, responded to our report on 16 October 2012. In her letter the Minister indicated that she regards our audit as an encouragement to continue with the present policy of promoting the involvement of the public bodies in the drafting of new legislation and in implementing it on the islands. She adds that much has already been done in this respect, but also endorses our observation that there is still some way to go.

On the subject of legislative restraint the Minister states that our assumption that some legislation has been excluded from this principle, without a clear indication of what legislation is involved, is based on a misunderstanding. She explains that it is important for the reasons for *all* new legislation to be explained, in each case against the background of the policy of legislative restraint, but that separate reasons need not be given in the case of legislation belonging to what she terms 'the transitional package'. In our view, however, the Minister still does not make sufficiently clear what legislation belongs to the transitional package and what legislation is new.

The island executives of Bonaire, St Eustatius and Saba have also responded to our report, and have indicated that they agree with our findings and conclusions.



# 1 About this audit

4

## 1.1 Introduction

On 10 October 2010 constitutional reform took place in the Kingdom of the Netherlands. The Netherlands Antilles ceased to exist as a country and Curaçao and St Maarten became independent countries within the Kingdom. Bonaire, St Eustatius and Saba (known as the BES islands) became public bodies<sup>1</sup> of the Netherlands and are together described as 'the Dutch Caribbean'. In this audit we examine the new relationship between central government and these public bodies. In the run-up to the constitutional reform and in the period that followed, various agreements were made between central government and the BES islands about this new relationship. This audit considers the situation regarding three of these agreements:

- legislative restraint;
- the standard of public services in the public bodies;
- consultation with the public bodies about new legislation.

## 1.2 About the Dutch Caribbean

### *Prior to the constitutional reform*

The constitutional reform was the result of a lengthy process. The actual transition was preceded by various referendums on the desired status of the islands, by advisory opinions of working groups and by government consultations. When it became known that the BES islands would become public bodies of the Netherlands, agreements were made between central government and the islands about the consequences of the new constitutional relationship. An agreement on the dissolution of the Netherlands Antilles was signed on 15 December 2008 and took effect on 10 October 2010.

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<sup>1</sup> A public body is a government authority that carries out certain tasks within a given geographical area.





### *Organisation of the Dutch Caribbean*

5

Since 10 October 2010 the Netherlands has consisted of a European part and a Caribbean part. The Dutch Caribbean comprises the public bodies of Bonaire, St Eustatius and Saba, and has a population of about 20,000. The structure of the public bodies is modelled as closely as possible on Dutch municipal government. The Netherlands-Antillean names of the administrative authorities have been retained (see table below).

<b>Names of administrative authorities in the Dutch Caribbean and municipal equivalents</b>	
<b>Dutch Caribbean</b>	<b>Municipal equivalent</b>
Island council	Municipal council
Island executive	Municipal executive (headed by mayor)
Island Governor	Mayor
Member of island executive	Member of municipal executive
Clerk to island executive	Clerk to municipal executive
Clerk to island council	Clerk to municipal council

The public bodies receive a general grant and special-purpose grants. In addition, they may levy local taxes and duties.

Since 10 October 2010 the Dutch ministers have each been responsible for their own policy area in the Dutch Caribbean. The individual ministers are free to decide how they will carry out their policy and tasks (BZK, 2012). The Minister of the Interior and Kingdom Relations ('Minister of the Interior') is responsible for coordinating central government policy affecting the public bodies. The Minister has a number of tasks involving financial supervision of the public bodies, and may also issue general and special instructions to the island executives concerning financial and non-financial management.

Almost all ministries are represented in the Dutch Caribbean. These 'outposts' maintain contact with the island authorities and the local population. The ministries make use of a single shared service organisation known as the National Office for the Dutch Caribbean. And in The Hague each ministry has a coordinator for the Dutch Caribbean, who is well acquainted with the public bodies and is responsible for contacts between the ministry and the Dutch Caribbean.

1 May 2011 saw the appointment of a Kingdom representative for the public bodies of Bonaire, St Eustatius and Saba. One of his tasks is to



report on matters or problems concerning the public bodies. Another is to inform the island executives about matters of importance to the public bodies.

6

The constitutional status of the public bodies of Bonaire, St Eustatius and Saba will be evaluated in 2015, five years after the introduction of the constitutional reform. The Ministry of the Interior and Kingdom Relations ('Ministry of the Interior') has launched a government-wide survey to obtain the information necessary for this evaluation. The ministries and the public bodies will together decide what form the evaluation should take.

#### *Relevant legislation*

Below is a brief description of the legislation relevant to this audit.

The amendment of legislation in connection with the new constitutional position of the public bodies within the Netherlands was regulated in the following Acts of Parliament: the Public Bodies of Bonaire, St Eustatius and Saba (Amendment of Legislation) Act, the Second Public Bodies of Bonaire, St Eustatius and Saba (Amendment of Legislation) Act A / B, and the Third Public Bodies of Bonaire, St Eustatius and Saba (Amendment of Legislation) Act.

The Public Bodies of Bonaire, St Eustatius and Saba (Introduction of Legislation) Act provides that existing legislation on the islands will remain in force. Dutch legislation will be introduced gradually and may be departed from to take account of the differences between the Netherlands in Europe and the public bodies in the Caribbean.

The relationship between central government and the public bodies is regulated in the Public Bodies (Bonaire, St Eustatius and Saba) Act. This lays down rules for the establishment and organisation of the public bodies, the composition, powers and meetings of their island executives and supervision of these executives.

The Public Bodies of Bonaire, St Eustatius and Saba (Finances) Act contains rules governing the financial powers of the public bodies, including the levying of taxes. This Act also regulates their financial relationship with central government, in the same way that the relationship of municipalities and provinces is regulated in the Grants to Local Government Act. Provision is also made in this Act for the establishment of a Financial Supervision Authority for Bonaire, St Eustatius and Saba.



### 1.3 Object and terms of reference

7

We have examined three of the agreements made prior to the constitutional reform, concerning legislative restraint, the standard of public services in the public bodies, and consultation with the public bodies about new legislation. We chose these agreements because they are the subject of regular debate in the Senate and the House of Representatives. Moreover, it is evident from reports from the Kingdom representative and various research institutes that much about the content of these agreements and their performance is unclear. The aim of this audit is to help clarify these matters. To monitor performance of the three agreements we have selected two areas of policy: education and health care. In this way we hope to assist in developing cooperation between central government and the Dutch Caribbean and to provide the two Houses of Parliament with more information about it. Naturally, our findings and conclusions about the performance of the agreements apply only to the fields of education and health care, but they may help to shed light on cooperation in other policy areas as well.

The terms of reference of this audit are to determine to what extent agreements made between central government and the public bodies in respect of legislative restraint, the standard of public services and consultation with the public bodies about new legislation are being performed in the policy areas of education and health care.

We have chosen education and health care because these are the policy areas that account for the largest flows of funds from central government to the Dutch Caribbean. According to the budget estimate for 2012 the total expenditure on education and health care in the Dutch Caribbean will be €43.7 million and €67.6 million respectively.<sup>2</sup> Other reasons for choosing education and health care are that they affect the inhabitants of the public bodies directly and that a clear link can be made with the standard of public services.

### 1.4 Organisation of the report

Chapters 2, 3 and 4 deal with the three agreements examined in this audit:

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<sup>2</sup> For an overview of the total flow of money from central government to the public bodies, we refer to the 2013 budget of the BES Fund, which includes such an overview for the first time.



- legislative restraint (chapter 2);
- standard of public services (chapter 3);
- consultation with the public bodies (chapter 4).

8

In chapter 5 we make some final observations about our audit findings. And, lastly, chapter 6 contains the responses of the ministers concerned and the island executives of the public bodies, followed by our afterword.



## 2 Legislative restraint

9

### 2.1 Agreements about legislative restraint

#### *General agreements*

The first formal agreement about legislative restraint was made at a conference in 2006 on the position of Bonaire, St Eustatius and Saba within the Kingdom of the Netherlands. During this conference the central government and the three islands agreed that Netherlands-Antillean legislation would be gradually replaced by Dutch legislation (see box below for the text of the final declaration of the conference).

#### **General agreement about legislative restraint**

'At the start of the new constitutional arrangements the Netherlands-Antillean legislation in force on the three islands will remain in force. Gradually this legislation will be replaced by Dutch legislation. However, in view of the size of their population, their great distance from the Netherlands, their insular character and other factors, the legislation may differ from that in force in the Netherlands. What matters require different provisions will be carefully analysed.' (BZK, 2006, p. 2)

In October 2009 this agreement was the subject of an undertaking given by the then State Secretary for the Interior and Kingdom Relations to the House of Representatives to the effect that legislative restraint would be observed for a period of five years after the transition. According to the State Secretary, legislative restraint meant, for example, that in that period:

- no legislative operations having a major impact on governance or the local population would be undertaken;
- in principle, only legislation for which there is a clear need would be introduced, for example to rectify an omission;
- Netherlands-Antillean legislation would be retained for the time being;
- too many changes should not be made all at once on the islands and account should be taken of absorption capacity (BZK, 2009).

The aim of the agreement about legislative restraint is to allow the local population and local office-holders a period of quiet in which to become



acclimatised after being confronted with a large quantity of new legislation at the time of the constitutional reform (BZK, 2011a).

10

After these agreements were made, the Minister of the Interior also gave an undertaking to the House of Representatives that no decision would yet be taken on the manner in which the remaining Dutch legislation would be introduced after the five-year period of restraint. This decision was postponed until after the evaluation in 2015 when a choice could be made between introducing the remaining legislation all at once by means of a large-scale legislative operation, spreading the introduction over a longer period or extending the period of legislative restraint (BZK, 2009).

The Minister of the Interior informed the Senate by letter how the government proposed to guarantee the promised legislative restraint in respect of the public bodies. According to the Minister, legislative restraint does not mean that no new legislation at all can be introduced. The introduction of new legislation will remain possible for the purpose of maintaining and making necessary improvements to existing legislation and remedying abuses. However, these improvements will, in principle, be made by amending the legislation currently in force for the Dutch Caribbean: it is not the intention that legislation which is currently in force in the Netherlands in Europe should be introduced on a large scale in the Dutch Caribbean in the coming years. According to the Minister, legislative restraint will be ensured by the following:

- the reasons why new or amended legislation is needed at a time of legislative restraint will have to be expressly stated;
- section 2 of the Public Bodies of Bonaire, St Eustatius and Saba (Introduction of Legislation) Act provides that Dutch legislation is applicable only in so far as expressly provided for or if this is clear in some other way from a statutory regulation;
- all new bills and draft orders in council will be considered by the cabinet, cabinet committees and official preparatory bodies;
- bills and draft orders in council that have administrative and financial consequences for the public bodies must be coordinated at interministerial level with the Ministry of the Interior. According to the Minister of the Interior, such coordination will take place in practice for all legislation introduced in the Dutch Caribbean. Since 10 October 2010 the form accompanying bills and draft orders in council that are presented to the cabinet must indicate whether this coordination has taken place (BZK, 2011a).

Another safeguard of legislative restraint is that from the autumn of 2012 a quarterly government-wide survey will be drawn up of all draft



legislation affecting the Dutch Caribbean. The Ministry of the Interior is coordinating this process. This survey will be made available each quarter to the island executives of the public bodies and will be discussed with them during the biannual consultations (known as Dutch Caribbean weeks) between the island executives and the ministers and their civil servants. On the basis of this survey the ministries and the island executives of the public bodies will determine in joint consultation what legislation should be introduced and when. Factors to be taken into account include both the content of the legislation and the capacity of the local government departments for consultation and implementation. The first quarterly survey will be discussed by the island executives and the ministries during the Dutch Caribbean weeks in the autumn of 2012.

11

Potential problems involving the application of legislative restraint and its consequences are monitored by the Ministry of the Interior in various ways. For example, the Minister of the Interior and his officials hold regular consultations with the island executives, the Kingdom representative and his staff and the Financial Supervision Authority. There are also various forms of interministerial consultation, often initiated by the Ministry of the Interior. An important example is the monthly consultation between the coordinators of all ministries in the Interministerial Working Group on the Dutch Caribbean and Kingdom Relations (IWG). The IWG focuses on the exchange of information between the ministries, making official agreements and, where appropriate, preparing decisions for the cabinet.

#### *Performance of general agreements*

A substantial package of legislation accompanied the constitutional reform. The majority of this legislation entered into force on 10 October 2010. In some cases, however, it was necessary or more practical for the legislation to enter into force at a later date. For example, it was more practical for the tax legislation to take effect on 1 January 2011, at the start of a new financial year. And it was necessary for the BES Housing, Spatial Planning and the Environment Act to enter into force at a later date because the legislative process could not be completed earlier. This Act was introduced at the end of 2011.

The agreements about not making too many changes all at once and taking account of absorption capacity are rather imprecise. Nor is it readily apparent from the agreements on legislative restraint what legislation is exempt from this principle. The Ministry of the Interior states that all legislation which should have been amended by the transition date (10 October 2010) is excluded from the principle of



legislative restraint. According to the Ministry, an exception is also made for legislation which should have been introduced on the transition date but is introduced later either for practical reasons (tax legislation) or out of necessity (e.g. the BES Housing, Spatial Planning and the Environment Act). It is also unclear whether all legislation which came into effect on and after the transition date was actually necessary. There are no criteria for deciding this.

12

As it is unclear what legislation falls under the agreement on legislative restraint, we are unable to assess whether the agreement has been performed. However, the undertakings given by the Minister of the Interior about safeguarding legislative restraint are sufficiently specific to allow us to assess compliance. We have therefore examined whether these undertakings have been honoured in relation to education and healthcare policy.

## **2.2 Legislative restraint in education and health care**

### **2.2.1 Education**

An exception to the application of the principle of legislative restraint has been made for education legislation (BZK, 2011a). This exception was prompted by a study by the Education Inspectorate in 2008, which showed that the standard of education on the three islands was very poor. However, Netherlands-Antillean education legislation did not provide the right statutory framework for raising standards. The Ministry of Education, Culture and Science (Ministry of Education) therefore decided, with the approval of the public bodies, that it would be necessary to introduce the legislation applicable in the Netherlands in Europe rather than to amend the existing Netherlands-Antillean legislation. The reason for making this exception to the agreement about legislative restraint was explained in the explanatory memorandum to the bill (OCW, 2010). The bill was agreed with the Ministry of the Interior at official level and then considered by the cabinet.

To meet the wish for a period of acclimatisation and quiet, the Ministry of Education is arranging for the introduction of the various items of education legislation to be staggered and for their entry into effect to be deferred (OCW, 2011). For this purpose it has drawn up a list of all legislation still to be introduced and has indicated when (from 1 January 2011 onwards) each statutory provision will come into force, namely immediately, within one or two years or within five years.





### **2.2.2 Health care**

13

The main change to the healthcare legislation has been the introduction of the Bonaire, St Eustatius and Saba Healthcare Insurance Decree. We assessed whether the legislative restraint safeguards have worked in practice in relation to this Decree. As it was felt that new healthcare insurance provisions were needed for the public bodies, it was deliberately decided to depart from the principle that Netherlands-Antillean legislation should be retained as far as possible. The reason for this departure was explained in the explanatory memorandum to the Decree, which came into force on 1 January 2011.

The healthcare insurance provisions in the Netherlands Antilles were spread among different schemes. As a result, there were different types of healthcare insurance, for example healthcare insurance under public law for public servants and various private healthcare insurance schemes. Some people had no insurance cover at all. Maintaining the different schemes was regarded by the Dutch government as undesirable. Applying the Dutch system was not considered appropriate, not least because of the limited number of care providers on the islands. According to the Ministry of Health, Welfare and Sport ('Ministry of Health'), there was also no properly functioning market in which healthcare insurers could compete with one another. It was therefore decided to introduce a new healthcare insurance system for the entire population of the islands. It is based on the system in the Netherlands in Europe, but takes account of the local situation in terms of both medical infrastructure and the effect on purchasing power. This has been laid down in a new order in council known as the Bonaire, St Eustatius and Saba Healthcare Insurance Decree. The explanatory memorandum to the Decree explains that in view of the principle of legislative restraint the question of whether the provisions could be brought into line with Dutch legislation would not be examined until five years had passed. The order in council was agreed at official level with the Ministry of the Interior and subsequently considered by the cabinet.

## **2.3 Conclusion**

Much new legislation was introduced on or shortly after the transition date. Agreements were made between central government and the public bodies about legislative restraint. However, it is unclear from these agreements what legislation must comply with the principle of legislative



restraint. Accordingly, we are unable to assess whether the agreements have been performed.

14

The aim of the agreements about legislative restraint is to allow the local population and members of the island executives a period of quiet in which to become acclimatised to the new situation. Agreements were made with a view to safeguarding this principle. These agreements have been worked out in more detail. We conclude that the safeguards have been observed in the fields of education and healthcare policy. The need to depart from the principle in these areas of policy has been explained. We also note that agreement has been reached between the Ministry of Education, the Ministry of Health and the Ministry of the Interior about the new legislation.



## 3 Standard of public services

15

### 3.1 Agreements about the standard of public services

In advance of the constitutional reform, agreements were made between central government and the island authorities of Bonaire, St Eustatius and Saba about the standard of public services. This meant the standard of services (for example in education and health care) to which the islands were entitled as public bodies of the Netherlands. Consultations held on 31 January 2008 between the island executives of Bonaire, St Eustatius and Saba and the State Secretary for the Interior and Kingdom Relations resulted in agreements on this matter (see box below).

#### General agreements about the standard of public services

- '[...] The basic principle is that criteria will be drawn up for an acceptable standard of public services on Bonaire, St Eustatius and Saba, in particular in the fields of education, health care, social security, and safety and security.
- Account will be taken of the specific circumstances: the small population of the islands, their insular character, their great distance from the Netherlands, their small surface area, the nature of the terrain, and any undesirable administrative and socioeconomic effects.
- The Netherlands and the BES will work together to achieve this standard. The measures can be introduced gradually.
- The Netherlands is responsible for legislation and policy in these four fields, and responsibility for implementation rests with the islands. Resources will be allocated in keeping with the tasks.
- Another basic principle is that it is necessary to avoid a situation in which measures to achieve the change of status take insufficient account of the specific circumstances of Bonaire, St Eustatius and Saba and thus cause social and economic dislocation.' (BZK, 2008a)

These are outline agreements. This is also true of the agreements made in other consultations between central government and the three island executives prior to the constitutional reform. In general, they describe the effort that must be made by central government, for example in the



form of a survey or the financial resources to be made available, rather than define a specific end result or intended social effect.

16

Intentions are expressed about the desired social effect, but this is not specifically defined. The Minister of the Interior noted that the decision not to have a standard of public services equal to that of the Netherlands in Europe was deliberate, since it was thought that this would otherwise act as a magnet and seriously weaken the islands' competitive position (BZK, 2011b).

As agreed in the government consultations of 31 January 2008, criteria had to be drawn up for the desired standard of public services in each policy area. For this purpose it was important to make a baseline assessment of current provision in each such area. Only then would it be possible to decide what needed to be done in order to achieve the desired standard of services and to assess in retrospect whether this standard had been achieved. Little information was available for this baseline assessment. This was due partly to the deficient records of government bodies and other organisations and partly to the fact that the islands had no authorities that gather statistical information. It is apparent from our interviews with the island executive members and public body staff that they feel the need for an aspiration level to be formulated for each policy area: in other words, a statement of the desired standard of services. This does not yet exist for a number of policy areas, partly because the details of the agreements must still be worked out.

It is therefore necessary to make a baseline assessment of provision in each policy area, the desired standard of services and what must be done in order to attain this standard. In the following section we describe how the Ministries of Education and Health have tackled this in their respective policy areas.

## **3.2 Standard of education and healthcare services**

### **3.2.1 Education**

#### *Agreements*

To determine the baseline situation in education, statistical information is required. Prior to the constitutional reform it was found that such information was often absent. Nor was there any information about annual expenditure or the financial position of schools, because the accounts and financial records were not in order. In 2008 the Education Inspectorate, at the request of the Ministry of Education, therefore



carried out a survey of the standard of education on the three islands. The aim was to provide the Ministry of Education with information that would enable it to draw up an investment plan. The Inspectorate concluded that the standard of education on the islands for children of compulsory school age was very poor. Most pupils trailed several years behind in reading, arithmetic and knowledge of the Dutch language. This was mainly due to the fact that textbooks were not available for all subjects and that not all subjects were taught because of a shortage of teachers. According to the Inspectorate, the state of education for children of compulsory school age on the BES islands was extremely worrying, barring a few exceptions. The survey findings formed the basis of an advisory report on a plan to raise the standard of education. In the government consultations in advance of the constitutional reform it was agreed that the Ministry of Education would formulate measures together with the three island executives. The aim was to raise the standard of education to a level acceptable to the Netherlands (see box).

17

#### Desired standard of education services

The desired standard of education services is a standard acceptable to the Netherlands. According to the Ministry of Education, this means that pupils who have had a period of compulsory schooling or secondary education on the BES islands should have attained a sufficiently high level to be able to enter post-secondary education in the Netherlands without difficulty.

Education legislation for the Dutch Caribbean will adhere to the Dutch criteria for educational standards. This is because the Ministry of Education does not consider it desirable for the standard of education in two parts of the Netherlands to differ. The agreements about raising the standard of education on the three islands were recorded in a document entitled *Education Agenda for the Dutch Caribbean: Working Together on Quality* (OCW, 2011) in early 2011. This sets out the main features and ambitions of education policy. Five priorities are mentioned in the education agenda:

1. raise the standard of education;
2. improve the quality of teaching staff, heads and deputy heads and school boards;
3. provide tailor-made services;
4. make vocational education more appealing;
5. ensure that the preconditions are met.

For each priority, the plan sets out who does what, what assistance may be expected, when this will happen and what results will be achieved. For



example, the ambition is that by 2016 the same secondary school examinations should be held in the Dutch Caribbean as in the Netherlands in Europe.

18

#### *Performance of the agreements*

Various steps have already been taken to ensure performance of the agreements. To improve the quality of teachers and school heads, school coaches (experienced school heads) have been appointed to provide guidance and advice. And to improve the basic standard of education each school has drawn up an improvement plan with the help of a school coach. This sets out what each school wishes to achieve in order to raise the standard of education. Plans have also been drawn up to improve the quality of teaching staff. The Education Inspectorate is carrying out regular checks to monitor the standard of education over time. Below is an example of the manner in which the Ministry of Education is helping to improve public services in the Dutch Caribbean.

#### **Example of how the Ministry of Education is tackling the problem**

Providing adequate school buildings is, in principle, the responsibility of the public bodies. However, for decades prior to the constitutional reform there was little or no investment in such buildings. Consequently, there was a huge maintenance backlog. In addition, the buildings did not meet the needs of the schools. This is why the Ministry of Education undertook to help the public bodies to work off the backlog in the first few years after the constitutional reform. It was agreed that the public bodies would allocate part of their general grant for this purpose and that the rest would be funded by the Ministry. In March 2011 plans were drawn up by the Ministry and the public bodies. However, in the autumn of 2011 the Government Buildings Agency noted that these plans were twice as expensive as estimated. The plans have therefore been pruned back. For example, refurbishment has been chosen instead of new buildings in a number of cases. Some parts of the plans have also been dropped. For example, the school buildings plan for Bonaire provided that sports and childcare facilities would be financed by the Ministry of Education. When the building costs turned out to be higher than expected, the Ministry of Education indicated that it was no longer willing to fund these facilities, partly because these policy areas no longer came within its remit.

To fulfil the ambitions in the education field, much has to be done to raise standards. Today, the first improvements are already apparent. For example, a new secondary school has been built on Bonaire, schools on St Eustatius have been refurbished and Saba has obtained new school



buses. Teaching aids such as textbooks and digital whiteboards have also been purchased for the schools.

19

### 3.2.2 Health care

#### *Agreements*

During the baseline assessment of healthcare provision prior to the transition it became apparent that few relevant data were available on the islands. For example, no registration systems were kept by healthcare insurers or the hospitals. To make the baseline assessment of the standard of healthcare provision, the Ministry of Health carried out a quick scan in 2006. The aim was to make an overall assessment of the healthcare situation at that time. The scan was based in part on the policy plans of the healthcare organisations on the BES islands, in so far as these were available. The result of the quick scan was an overview of the most important matters requiring attention in the healthcare field. The subjects covered were healthcare buildings and facilities, the insurance system, funding and existing plans for restructuring, supervision and public health. The conclusion was that much needed to be improved: the then insurance system was fragmented and the public bodies incurred high costs and debts as a result of the funding system. These findings prompted the Ministry of Health to commission a study by an external consulting firm in 2008. This study produced a medium-term plan for the development of healthcare provision together with a sub-plan for each island.

In September 2009 the Netherlands and the Netherlands Antilles agreed a mutual arrangement under which the Ministry of Health would assume responsibility for some aspects of healthcare provision in the Netherlands Antilles even before the date of constitutional reform.<sup>3</sup> Until the moment of transition these tasks were performed under the formal authority of the Netherlands Antilles as a country within the Kingdom. The agreements made in the arrangement included promoting the development of a care administration office and a new system for reimbursing the cost of medicines. It was also agreed that Dutch standards would from then on be a prime criterion when admitting and recruiting healthcare professionals on the BES islands.

The quick scan, medium-term plan and mutual arrangement referred to above formed the basis of the agreement on health care made during the government consultations in advance of the constitutional reform. The

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<sup>3</sup> A 'mutual arrangement' within the meaning of article 38, paragraph 1 of the Charter for the Kingdom of the Netherlands (Ministry of Health / Youth and Families).



Ministry of Health did not formulate a desired level of provision for healthcare policy as a whole. However, agreements were made about individual points (see box).

20

#### Agreements about healthcare provision

- 'A public healthcare insurance system will be developed. A list of priorities for investment in healthcare provision will be drawn up.' (BZK, 2008a)
- 'The details of the proposed activities will be decided in close consultation with the BES islands.' (BZK, 2008b)
- 'The BES medium-term healthcare and buildings plan will be adopted in broad outline and form the basis for a multi-year programme of specific and necessary improvements.' (BZK, 2008c)

The Ministry of Health has indicated that it wishes to define the level of provision at each healthcare institution separately, although this must be initiated by the board members of the institutions concerned. The implementation and funding of these ambitions will then be coordinated with the Healthcare Insurance Office, an organisation which is responsible on behalf of the Ministry of Health for rolling out the healthcare insurance system on the islands. To date, a target for the level of provision has been set only for Bonaire, where the ambition is to offer 80% of the required healthcare services on the island. However, this is more an aspiration than a real target. The criterion is that patients should be referred abroad only in exceptional cases. This ambition is based on a 2009 study and survey commissioned by the hospital on Bonaire. The aim of the study was to assess the standard of specialist medical care on Bonaire, and the survey was intended to describe how this care should develop against the background of the constitutional transition.

#### *Performance of the agreements*

The agreement about developing a public healthcare insurance system was performed when the BES Healthcare Insurance Decree came into force on 1 January 2011. As there were backlogs in all areas of health care, it was provided that the improvements would not all be carried out simultaneously. The Ministry of Health therefore drew up a list of priorities. This was based on factors such as urgency (e.g. life-threatening illnesses) and costs.

The agreement about adopting a medium-term plan for the development of healthcare services has also been performed. This happened in 2008, after which multi-year plans were drawn up for each island in order to make the necessary improvements to health care. The Healthcare





Insurance Office and the healthcare providers are responsible for implementing the plans. The agreements between the Healthcare Insurance Office and the healthcare providers have been laid down in contracts.

21

Specific healthcare indicators and target values have not yet been adopted everywhere on the BES islands. Up-to-date, reliable, accurate and complete data are essential for this purpose. However, the registration of data is not yet properly organised. For example, registration systems are still not kept by the Healthcare Insurance Office and the hospitals. These are being developed and have not been accorded top priority by the Ministry of Health.

Since the constitutional reform much has changed in the healthcare field. The main change is that every inhabitant of the BES islands now has healthcare insurance. There has also been investment in the refurbishment of hospitals and the purchase of equipment. For example, Bonaire has a new dialysis centre and all three islands have new ambulances. Below is an example of how the Ministry of Health has set about improving healthcare services in the Dutch Caribbean.

**Example of the approach adopted by the Ministry of Health**

The hospital on Bonaire has entered into a cooperative arrangement with two teaching hospitals in the Netherlands in Europe. Provision has been made for specialists of these hospitals to work for a few weeks or months in the hospital on Bonaire. In this way Bonaire can provide more specialist care on the island itself than was possible before the constitutional reform. The hospitals on Bonaire and St Maarten have signed a letter of intent for the secondment of specialists from hospitals in the Netherlands in Europe to St Maarten as well. These services will also be accessible to inhabitants of Saba and St Eustatius.

The healthcare reforms initially caused unrest among the local population. This was due in part to the sheer number of changes being made all at once. For example, since the constitutional reform medical referrals abroad have been mainly to Guadeloupe and Colombia rather than to Miami, Puerto Rico and Curaçao, the costs of certain medicines are no longer reimbursed, and responsibility for health care rests with the Ministry of Health rather than with the public body.



### 3.3 Conclusion

22

The agreements made between central government and the public bodies about the standard of health care were highly abstract. These agreements are not measurable. This is why it is necessary to examine the agreements in each policy area to assess to what extent they are being performed. Little information needed to make a baseline assessment was available about either the education or the healthcare sector prior to the transition. The Ministries of Education and Health therefore first examined the existing situation. This was in keeping with the principle that the baseline situation must be known before new policy is formulated. On the basis of the information they obtained, the two ministries then drew up improvement plans, the partial implementation of which has already started.

The Ministries of Education and Health take differing approaches to determining the desired level of provision. For example, the Ministry of Education aims to ensure that all three islands will have a standard of services comparable to that in the Netherlands in Europe, whereas the Ministry of Health has chosen to determine the standard of provision for each healthcare institution separately. Target values have been formulated for the level of educational provision, but the same is not yet true of all areas of health care. Island executive members and public body staff have indicated that a definition of the desired level of services is also necessary in other policy areas.



## 4 Consultation with the public bodies

### 4.1 Agreements about consulting the public bodies

#### *General agreements*

Prior to the constitutional reform, central government and the island executives agreed during their consultations that the executives would be consulted if new legislation would have consequences for the public bodies. This agreement was recorded in section 209 of the Bonaire, St Eustatius and Saba (Public Bodies) Act. During their meeting on 31 January 2008 the State Secretary for the Interior and the three island executives agreed that account would be taken of the specific circumstances. A suitable way of doing this for the legislator is through consultation with the executives.

#### **Section 209 of the Bonaire, St Eustatius and Saba (Public Bodies) Act**

1. Our Minister whom it may concern must give the island executives concerned or a body that can be deemed representative of them the opportunity, if necessary within a period to be specified, to express their views on bills, draft orders in council or draft ministerial orders in which:
  - a) some act of regulation or governance is required on the part of the public bodies;
  - b) significant changes are made to the tasks and powers of the island authority.
2. Draft legislation as referred to in subsection 1 must include in the accompanying explanatory notes a statement of the consequences for the organisation and operation of the public bodies and a statement of the views of the island executives or the representative body concerned as referred to in subsection 1.
3. Without prejudice to subsections 1 and 2, Our Minister whom it may concern must give the island executives concerned or a body that can be deemed representative of them the opportunity, if necessary within a period to be specified, to express their views in advance on:



- a. far-reaching policy frameworks that relate exclusively to the public bodies;
  - b. policy frameworks that relate to the public bodies and constitute a far-reaching departure from the legislation applicable to the Netherlands in Europe.
4. Our Minister whom it may concern is not obliged to seek in advance the views referred to in subsections 1 and 3 above if this is not possible due to urgent circumstances. In such an event, these views must be sought and made public as soon as possible.

24

Initially, this agreement was not couched in more specific terms. For example, no provision was made for a response time. As a result, ministries applied different deadlines. In March 2012 the Ministry of the Interior and the public bodies agreed that formal correspondence between central government and the public bodies should always be routed through the clerks to the island executives. They also agreed that such correspondence should be by email and that a response time of six weeks should apply in all cases, except in the event of urgency. The clerk to the island executive then assesses on a case-by-case basis whether the time limit is feasible and notifies the ministry concerned accordingly.

The Ministry of the Interior advises ministries whether it is necessary to consult the public bodies about new legislation. In practice, only a small part of all statutes and delegated legislation that apply to the Dutch Caribbean are presented for consultation. In the other cases the legislation often involves technical modifications or textual changes. Or it may have a minimum impact on the islands. An example is the amendment of legislation on the minimum number of board members of a Chamber of Commerce. In such cases the Ministry of the Interior advises the ministry concerned not to consult the public bodies, to avoid overburdening them. On the initiative of the Ministry of the Interior a list is kept of the contacts at each ministry for the public bodies, so that they know whom to approach.

#### *Performance of the agreements*

The constitutional reform meant that the public bodies were confronted with a large quantity of draft legislation. In general, they were given the opportunity, as agreed, to express their views on this. Since March 2012 the ministries have in general applied the agreed response time of six weeks. Situations can occur in which this time limit is not applied. Sometimes this is because the civil servant concerned is unaware of the agreement and at other times it may be because correspondence is sent by post rather than by the agreed method of email. In such cases, much



of the response time may already have elapsed when the correspondence is received. If the six-week period is not applied, the clerks to the island executives always have a remedy available since they can lodge an objection based on this agreement.

25

Although section 209 of the Bonaire, St Eustatius and Saba (Public Bodies) Act provides that the public bodies should be consulted about bills or other draft legislation, no agreements have been made about the stage in the legislative drafting process at which they should be consulted. The ministries concerned deal with this in different ways. Sometimes the public bodies are presented with a ready-made bill and at other times they are consulted at an early stage of the drafting process. In the latter case the public bodies are naturally in a better position to influence the proposed legislation.

In practice, the public bodies are not always able to give an adequate response to the proposals even though the agreements are complied with. This is mainly due to quantitative and qualitative staffing problems. This applies to all three public bodies but particularly to St Eustatius and Saba. The public bodies often have to choose which draft legislation they wish to comment upon or observe that they are unable to provide a reasoned response.

During our audit on the islands, the island executive members and public body staff made suggestions for improving the consultation process. One of the suggestions was to have a timetable of forthcoming draft legislation so that the public bodies know what legislation to expect on what date and can make the necessary preparations. The overview of forthcoming legislation which will be drawn up each quarter from the autumn of 2012 onwards is intended to meet this need. Another suggestion was that draft legislation should be accompanied by a brief summary or explanation. In this way, the clerk to the island executive would be better able to decide to whom the legislation should be passed internally for consultation purposes. Another suggestion was that the public bodies should be involved in the preparation of new legislation at an early stage, partly because the principle of taking account of local circumstances could then be observed.

#### Consultation about education and health care

In general, the public bodies are given the opportunity to comment on legislative proposals relating to education and health care. The correspondence shows that island executive members and public body staff have made frequent use of this possibility. Most of the questions



concern requests for clarification or proposals for changes to take account of specific local circumstances. For example, in the case of education questions were raised about the language in which the lessons would be given. And on the subject of health care some of the questions concerned the provision of assistance to patients during medical referrals abroad. In general, the Ministries of Education and Health have answered these questions and explained which suggestions were or were not adopted and why.

26

#### Example of a consultation procedure about education with St Eustatius

- Talks were held in March 2009 between the Ministry of Education and the island executive members and officials of the three islands about improvements in education.
- On 29 April 2009 the Ministry of Education sent a policy paper to the three islands setting out the criteria for drafting legislation for improvements in education.
- On 29 May the island executive of St Eustatius sent a reply commenting on the policy paper.
- In July 2009 the Ministry of Education sent the members of the island executive the text of the legislation, together with an explanation of the main subjects covered.
- At the end of July the island executive of St Eustatius notified the Ministry that it approved the draft legislation.

## 4.2 Conclusion

The consultation with the public bodies allows central government to take account of the special circumstances of the islands. Initially, the agreement about consultation was not specific. Later, a six-week response time was agreed. In general, the ministries observe this agreement. The agreement did not specify at what stage in the preparation of draft legislation the public bodies should be involved. The ministries determine this themselves. In cases where the public bodies are not given an adequate opportunity to respond, it is possible that insufficient account may be taken of the islands' specific circumstances.

The Ministries of Education and Health have in general given the public bodies the opportunity to comment on new legislation. Both ministries involve the public bodies at an early stage in the preparation of draft legislation. The Ministry of the Interior advises the ministries whether



legislation should be presented for consultation in order to avoid overburdening the public bodies.

27

Even where the agreements are performed, the public bodies are not always able in practice to respond adequately to the proposed legislation. This is mainly due to their quantitative and qualitative staffing problems. When legislation is introduced it is therefore possible that insufficient account is taken of the islands' specific circumstances. Island executive members and staff of the public bodies have made various suggestions for improving the consultation process. We endorse these suggestions.



## 5 Final observations

The constitutional reform of 10 October 2010 was a special event in the history of the Kingdom of the Netherlands. The Netherlands obtained territory in the Caribbean, and the islands of Bonaire, St Eustatius and Saba became part of another country. In view of the physical distance between the different parts of the Netherlands and the cultural differences between the Netherlands in Europe and the islands, becoming accustomed to this new constitutional relationship was bound to take time, and this is still the case. Today, two years after the constitutional reforms came into force, it is still too early to expect cooperation to run entirely smoothly. We consider it important for all parties concerned to pay due heed to the problems and for them to be discussed in all openness.

We examined three agreements made prior to the constitutional reform. In this way we hoped to help clarify the content of these agreements and their performance. To monitor performance of the three agreements we selected two areas of policy: education and curative health care. In our interviews with island executive members and public body staff, they often mentioned examples of non-observance of agreements in other policy areas. However, our audit did not extend to these other areas. The findings and conclusions of this report therefore relate only to education and health care.

Many of the general agreements made prior to the constitutional reform were of a political and administrative nature. Often they were outline agreements that were not elaborated and mainly expressed intentions. These agreements have to be fleshed out and then performed at a lower level in each policy area. In the case of education and health care we note that the ministries concerned and the island executives and their staff have each implemented these agreements in their own way.

The new relationship between central government and the public bodies is in the process of evolving. There is still scope for improvement across the board. It is therefore a good sign that central government and the public bodies are engaged in dialogue and that the new relationship is being evaluated.





We consider it important, with a view to the evaluation in 2015, that the desired standard of public services should be clearly defined for all policy areas. This has been done successfully in education, and we have also seen positive developments in health care. The experience gained in these fields can be put to good use in other policy areas.



## 6 Responses by the Ministers and island executives and afterword by the Court of Audit

30

The Minister of the Interior, writing in her own capacity and on behalf of the Ministers of Education and Health, responded to our report on 16 October 2012. The island executives of Bonaire, St Eustatius and Saba have also sent us their response. We have summarised these responses in section 6.1 below and the full texts have been posted on our website at [www.rekenkamer.nl](http://www.rekenkamer.nl). The responses prompted us to include a brief afterword in section 6.2.

### 6.1 Responses by the Ministers and island executives

#### **Responses by the Ministers of the Interior, Education and Health**

In her response the Minister of the Interior, writing in her own capacity and on behalf of the Ministers of Education and Health, has indicated that she regards our audit as an encouragement to continue with the present policy of promoting the involvement of the public bodies in the drafting of new legislation and in implementing it on the islands. She adds that much has already been accomplished in this respect, but she also endorses our observation that there is still some way to go.

In her response the Minister deals successively with the subjects of legislative restraint, the standard of public services and consultation with the public bodies about new legislation.

#### *Legislative restraint*

The Minister of the Interior considers that the assumption in our report that Dutch legislation would be introduced in its entirety in due course is incorrect. She points out that it has always been clear that there has been no agreement that all Dutch legislation would be introduced in the Dutch Caribbean in the long run. According to the Minister, it is important for the reasons for all new legislation to be explained in the light of the policy of legislative restraint. She also maintains that our assumption that some legislation has been excluded from the operation of the principle of



legislative restraint, without a clear indication of what legislation is involved, is based on a misunderstanding. The Minister indicates that she intended to explain that the package of legislation introduced in the course of the transition was necessary for the transition. There was no occasion to give an alternative reason for this legislation since the principle of legislative restraint relates to the period after transition and not to legislation belonging to what she terms the 'transition package'. According to the Minister, the transition package consisted on the one hand of a number of basic statutes (the Bonaire, St Eustatius and Saba (Public Bodies) Act, the Public Bodies of Bonaire, St Eustatius and Saba (Finances) Act and the Public Bodies of Bonaire, St Eustatius and Saba (Introduction of Legislation) Act) and, on the other, of former Netherlands-Antillean legislation which has been amended to take account of the new constitutional situation, albeit with a minimum of policy adjustments. Decisions to amend Netherlands-Antillean legislation more radically, introduce specific BES legislation or declare Dutch statutes applicable were taken either because the Constitution made this necessary or because no adequate Netherlands-Antillean legislation existed in a given policy area and the minister concerned had insufficient powers to rectify this.

31

In the Minister's opinion, we are wrong to say that there are no criteria for assessing the need to introduce legislation. The Minister also notes that legislative restraint is an agreement between government and parliament and not, as we say in the report, between government and the public bodies. The Ministers of Education and Health agree with our observations about legislative restraint in the areas of education and health care and see this as an endorsement of their policy.

#### *Standard of public services*

The Minister of the Interior indicates that the definition of what is an acceptable standard of public services in relation to the Netherlands differs according to the policy area and is a responsibility of the minister concerned. The wish to make far-reaching improvements to facilities in the Dutch Caribbean applies in all fields. The Minister of the Interior agrees with our assessment that each ministry should determine a desired standard of services before the evaluation in 2015. She emphasises that this is always a matter to be decided by the minister responsible for the particular policy area and that an overarching (government-wide) policy line would not be appropriate in this case.



The Ministers of Education and Health agree with what we have said about the standard of education and healthcare services and regard this as an endorsement of their policy.

32

#### *Consultation with public bodies about legislation*

The Minister of the Interior agrees with our finding that it is hard for the BES islands to respond adequately and in time to draft legislation because of the limited capacity of the machinery of government on the islands. Guidelines for the consultation process have therefore been drawn up with the public bodies. Under these guidelines, the Ministry of the Interior advises the other ministries on the need to present legislation in time. The Minister therefore regards our recommendations as an encouragement to continue along the chosen path.

#### **Response by the island executives**

The island executives of the public bodies of Bonaire, St Eustatius and Saba have also responded to our report. They have indicated that they agree with our findings and conclusions.

## **6.2 Afterword by the Court of Audit**

The Minister of the Interior takes issue with our observation that 'Dutch legislation' would be introduced. The phrase about Dutch legislation is a literal quotation from a 2006 administrative agreement between central government and the three islands. However, we do recognise, as stated by the Minister, that it was never the intention to introduce all Dutch legislation in the Dutch Caribbean.

The Minister has indicated that our observation that it is unclear what legislation is excluded from legislative restraint is based on a misunderstanding. She states that it is important for the reasons for all new legislation to be explained, in each case against the background of the policy of legislative restraint. However, she also states that separate reasons need not be given in the case of legislation belonging to the 'transition package'. In our report, however, we emphasise that it is unclear what legislation belongs to the transition package and is therefore excluded from legislative restraint. In our view this is still unclear.

According to the Minister, we are wrong to say that there are no criteria for assessing the need to introduce legislation. However, our observation relates to the distinction made by the Minister between the 'transition package' and 'new' legislation. As the distinction is not sufficiently clear,



it is also unclear what legislation should meet the criteria and what legislation should not.

33

The Minister is right to point out that the agreement about legislative restraint is an agreement between government and parliament. This agreement is the result of an agreement made between the government and the three islands at a conference in 2006.

We are gratified that the Minister agrees with our observation about accurately defining the desired standard of public services for each policy area before the evaluation in 2015. We agree with the Minister's observation that an overarching policy line for the standard of services would not be appropriate. We would emphasise that it is important for the baseline situation in each policy area to be known before new policy is determined.



## Annexe 1 Methodology

34

This audit was carried out in the period from May to July 2012. The terms of reference are as follows:

*To determine to what extent agreements made between central government and the public bodies in respect of legislative restraint, the standard of public services and consultation with the public bodies about new legislation are being performed in the policy areas of education and curative health care.*

The following audit questions were formulated on the basis of the terms of reference:

- What agreements about legislative restraint, the standard of public services and consultation with the public bodies have been made between central government and the public bodies of Bonaire, St Eustatius and Saba?
- How are these agreements being performed in the policy areas of education and curative health care?

For this audit we analysed, among other things, the legislation, the final and transitional agreements, lists of decisions of government consultations, parliamentary papers and progress reports. We also conducted interviews with:

- officials of the Ministries of the Interior, Education and Health;
- island executive members and staff of the public bodies;
- directors and/or staff of schools, hospitals and the Healthcare Insurance Office on Bonaire, St Eustatius and Saba;
- the Kingdom representative and the staff of his office.



## **Annexe 2      Abbreviations**

BES	Bonaire, St Eustatius and Saba
BZK	Ministry of the Interior and Kingdom Relations
IWG	Interministerial Working Group on the Dutch Caribbean and Kingdom Relations
OCW	Ministry of Education, Culture and Science



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36

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