

## Summary

### **National Risk Assessment on Money Laundering and Terrorist Financing Bonaire, Sint Eustatius and Saba**

#### **Study background**

Dutch policy to prevent and combat money laundering is based on the recommendations of the Financial Action Task Force (FATF) and European Union (EU) directives and regulations. The FATF – an intergovernmental body set up by the G7 in 1989 – focuses on the global combat of money laundering, terrorist financing and other related threats to the integrity of the international financial system. Members of the FATF, including the Netherlands, have committed themselves to implementing the 40 FATF recommendations on taking preventive and repressive measures by obliged entities, and to implementing measures to improve national legal and regulatory systems and international cooperation in this field. In addition, the FATF supervises the correct functioning and effectiveness of those (legal) measures. The majority of the FATF's recommendations has been adopted into the fourth EU Anti-Money Laundering Directive, applicable to all EU member states. Article 7 of this directive obliges EU member states to implement a risk-based policy against money laundering and terrorist financing and to establish a National Risk Assessment (NRA).

In 2017, the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC*) of the Ministry of Justice and Security<sup>92</sup> conducted an NRA on money laundering and an NRA on terrorist financing for the European Netherlands. These NRAs identified and categorised the ten most significant money laundering and terrorist financing risks in terms of their potential impact. Both studies also gave an insight into the extent to which the existing policy instruments (legislation and regulation) reduce the identified risks.

The risks for the Caribbean part of the Netherlands were not included in these NRAs. These overseas Caribbean territories, i.e. Bonaire, Sint Eustatius and Saba (indicated in this report as Caribbean Netherlands or BES islands) have had the status of 'public bodies' or 'special municipalities' since 10 October 2010. The BES islands – with a total population of around 24,000 inhabitants (on 1 January 2017) and a total surface area of 322 km<sup>2</sup> – are situated in the Caribbean Sea at a distance of 7,000-8,000 kilometres from the European Netherlands. Bonaire is situated east of Aruba and Curaçao, at 80 kilometres from the continental coast of Venezuela. Sint Eustatius and Saba are situated south of Sint Maarten and northwest of Saint Kitts and Nevis. Bonaire is situated at around 800 kilometres' distance from Sint Eustatius and Saba.

Because of significant differences between the Caribbean and European Netherlands in terms of geographical, demographic, economic and socio-cultural characteristics (context factors) that make these parts alternately more or less vulnerable to money laundering and terrorist financing, a separate NRA has been conducted

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<sup>92</sup> At the start of these assessments, this ministry was still named the Ministry of Security and Justice.

for the BES islands. There are also differences between both parts in terms of the existing policy instruments to combat the risks and the way this fight is carried out.

The aim of this NRA is to identify the most significant money laundering and terrorist financing risks in terms of their potential impact and to assess the 'resilience' of the policy instruments designed to prevent and combat money laundering and terrorist financing. Resilience entails the functioning of policy instruments, whereby the following is applicable: the greater the resilience, the more effectively the instruments combat the risk. This NRA also describes a number of lessons learned that could be taken into account in subsequent NRAs.

Different research activities were executed for this NRA to gain an insight into existing threats relating to money laundering and terrorist financing on the BES islands, namely a literature study, an email survey, interviews with expert organisations and other involved organisations, and an expert meeting. Although this provided a considerable amount of information about the subject of money laundering in the Caribbean Netherlands, it did not lead to any clear signals of threats relating to terrorist financing. This does not necessarily mean terrorist financing does not occur on the BES islands; however, interviewees and participants in the expert meeting were unable to substantiate the few rumours about terrorist financing to the extent that they should be considered a threat. Also, the written and online sources that were consulted gave no indication of the existence of threats relating to terrorist financing. Because of this, the report and this summary focus on the subject of money laundering.

### **What is money laundering?**

Money laundering can be defined in both legal and economic terms. The legal perspective of money laundering is based on the definition of money laundering in the articles in the Dutch Penal Code (*Wetboek van Strafrecht, WvS*). In the case of the BES islands, this definition is mentioned in Article 435a up to and including Article 435d of the Dutch Penal Code for the BES islands (*Wetboek van Strafrecht BES, WvS BES*). These articles criminalise money laundering and describe the various circumstances in which someone is guilty of money laundering.

The economic perspective describes the *process* of money laundering. It focuses on how money obtained from criminal activity is introduced into the legal financial system and is used in an economic sense in such a way that the origin of the money is concealed. In general, the economic process of money laundering can be divided into three stages:

- Placement: criminal funds are introduced into the financial system.
- Concealment: the origin of the criminal funds is concealed.
- Integration: the criminal funds are invested in legal projects, objects or goods.

Money laundering is preceded by another form of crime, such as the following predicate offenses: drug trafficking, human trafficking, theft or social/tax fraud. To launder criminal funds, criminals can use service providers operating in different sectors, like credit institutions, money or value transfer services and real estate. In this NRA, these sectors are indicated as channels. Furthermore, various methods connected to the above-mentioned stages of money laundering can be used. Methods of money laundering are not always reserved to one channel. Certain methods can be applied in multiple channels; for example, purchases with cash

money are possible at car dealers and jewellers. The economic perspective of money laundering is central to this NRA.

## Research methodology

The research methodology used for this NRA is qualitative in nature and predominantly based on experts' opinions and estimates. In short, the research methodology involved the following:

- A context analysis that depicts specific characteristics of the Caribbean Netherlands that are believed to be of influence in regard to the prevalence of money laundering and terrorist financing. For the purposes of this context analysis, a literature study was conducted and interviews were held with, among others, supervisory authorities, investigative authorities, other law enforcement authorities and the Financial Intelligence Unit of the Netherlands (*FIU-Nederland*), both in the European and Caribbean parts of the Netherlands.
- For the purpose of identifying threats relating to money laundering and terrorist financing on the BES islands, a literature study was conducted, interviews were held with supervisory authorities, investigative authorities, other law enforcement authorities and *FIU-Nederland* in the European and Caribbean Netherlands, and interviews were held with obliged service providers on the BES islands. This led to a longlist of threats relating to money laundering (but did not lead to a longlist of threats relating to terrorist financing – see earlier on in this summary).
- Prior to an expert meeting, the experts were sent an email survey in which they were asked to indicate for each threat and island to what extent they were familiar with facts/cases of threats on the longlist or, if that was not the case, whether the prevalence of the threats was plausible, implausible or unknown to them. Experts also had the opportunity to use the email survey to add money laundering methods that, according to them, were missing from the longlist.
- In the expert meeting with representatives of the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten, AFM*), the Wwft Supervision Office (*Bureau Toezicht Wwft, BTW*), the Dutch Central Bank (*De Nederlandsche Bank, DNB*), Customs Netherlands (*Douane Nederland*), the Public Prosecution Service European Netherlands (*Openbaar Ministerie Europees Nederland*) and *FIU-Nederland*, it was first verified whether they were familiar with threats relating to terrorist financing in the Caribbean Netherlands. When this turned out not to be the case, the experts – taking into account the contextual vulnerabilities of the Caribbean Netherlands – identified the most significant money-laundering risks in terms of their potential impact. They also assessed, in general terms, the resilience of the existing policy instruments designed to combat the identified money-laundering risks.
- In the final stage of the research, a validation interview was conducted with a key expert with the primary purpose of examining to what extent this person recognised the identified risks and whether any significant risks had been over-looked. Furthermore, a draft version of this report was submitted to the three supervisory authorities in the context of the Money Laundering and Terrorist Financing Prevention Act for the BES islands (*Wet ter voorkoming van witwassen en financieren van terrorisme BES, Wwft BES*): *AFM, BTW* and *DNB*.

## **What makes the Caribbean Netherlands vulnerable to money laundering?**

### **Geographical characteristics**

Geographical characteristics that are associated with the prevalence of money laundering are the proximity of Central and South American countries and other Caribbean islands (because of drug trafficking and/or illegal immigration) and the great distance from the Netherlands, which has consequences for the way the three supervisory authorities based in the European Netherlands (AFM, BTW and DNB) organise their supervision activities.

### **Socio-cultural characteristics**

The small scale and isolation of the BES islands have given rise to several socio-cultural characteristics, like a culture in which everyone knows each other and a culture of interest in which patronage and clientelism exist according to the principle of 'give a little, take a little'. Because of this, boundaries between private and professional relationships often become blurred. The effect of this has been strengthened by the low minimum wages and benefits on the BES islands and by the increased cost of living since the constitutional reform on 10 October 2010. To make financial ends meet, many residents are forced to combine multiple jobs with different employers. As a survival strategy, the commission of petty crime also occurs.

### **Economic characteristics**

Since 10 October 2010, there has been an increase in the number of wealthy people from the European Netherlands and in the number of European-Dutch and foreign expats residing on the BES islands. The income inequality between the local population and the aforementioned group has caused dissatisfaction among the local population, which can lead to integrity problems and conflicts of interest. The fact the BES islands can be characterised as cash-based economies is another economic characteristic that may be associated with the prevalence of money laundering. This focus on cash is part of the informal character of their economies and of the informal trade flows with nearby islands and/or countries. The increase in tourism has contributed to the development of the property market on Bonaire and made the island attractive for the settlement of European-Dutch and foreign real estate entrepreneurs. In the past, there were some instances of investments using criminal money.

### **Predicate offences for money laundering**

Most cases of property crime are registered on Bonaire (more than 700 registrations in 2017), compared to a much lower number on the much smaller islands Sint Eustatius and Saba (33 and 12 registrations in 2017 respectively). It must be borne in mind that crime is a 'dark number' phenomenon. Not all crime is known to the police and is registered. The actual extent of crime is probably higher than the official figures.

Bonaire is mainly used as a transit hub for international trafficking in narcotics, but local trafficking also occurs. Saba and Sint Eustatius are mainly final destinations. According to the Public Prosecution Service of Bonaire, Sint Eustatius and Saba, most drugs come from South America.

The BES islands can form an occasional transit area and destination for involuntary sex work and forced labour in households, agriculture and construction. Migrants who are in debt are sometimes subjected to forced labour in restaurants and other companies. This often concerns Colombians, Venezuelans and Dominicans. In recent years, there have not been any criminal investigations and prosecutions for human trafficking on the BES islands.

There are stories about corruption on the BES islands, but no hard evidence has been found. In recent years, there have therefore not been any criminal cases in the field of corruption.

### Risks relating to money laundering

The context analysis made clear that the characteristics of the individual BES islands differ in such a manner that the risks cannot be determined in a single analysis. The exercise of identifying the money-laundering risks was therefore carried out separately for each island. Table S1 shows only the most significant money-laundering risks in terms of their potential impact as identified by at least three participants in the expert meeting.<sup>93</sup>

**Table S1 Most significant money-laundering risks in terms of their potential impact in the Caribbean Netherlands**

Bonaire	Expert meeting score (n=6)
Purchase of private homes	4
Purchase of resorts/holiday parks	4
Real estate project development	4
Purchase of business premises	3
New construction of real estate	3
Abuse of notary services	3
Money transactions/deposits through licensed credit institutions	3
Money transactions/deposits through licensed money or value transfer services	3
Turnover manipulation, price manipulation and/or over- and underbilling in national and international trade flows	3
Funds obtained through crime, introduced into the financial system through casinos, online gambling and/or lotteries	3
Sint Eustatius	
Money transactions/deposits through unlicensed credit institutions/underground banking	4
Exchange of cash from small denominations to large denominations (and vice versa) through unlicensed credit institutions/underground banking	4
Turnover manipulation, price manipulation and/or over- and underbilling through own company/companies	3
Funds obtained through crime, introduced into the financial system through casinos, online gambling and/or lotteries	3
Physical movement of large amounts of cash (money from/to island via sea/air)	3
Saba	
Funds obtained through crime, introduced into the financial system through casinos, online gambling and/or lotteries	3

In the case of Bonaire, a total of ten money-laundering risks in terms of their potential impact were identified (by at least half of the participants in the expert meeting). Most risks relate to the real estate sector. In addition, money transactions/deposits through licensed credit institutions and licensed money and value transfer services, (a form of) Trade-Based Money Laundering and money laundering through gambling are among the top ten money-laundering risks (in terms of potential impact). For all identified risks, the experts were either familiar with

<sup>93</sup> Money-laundering risks that were identified by one or two participants can be found in an appendix to this report.

facts/cases of these money-laundering methods or considered their prevalence plausible, according to the email survey that was sent out prior to the expert meeting.

For Sint Eustatius, five money-laundering risks in terms of their potential impact were identified (by at least half of the participants in the expert meeting). The two most frequently mentioned risks related to unlicensed credit institutions / underground banking, followed by risks related to Trade-Based Money Laundering, gambling and the physical movement of large amounts of cash. The results of the email survey that was sent out to experts showed that for all five identified risks, they were either familiar with facts/cases of these money-laundering methods or considered their prevalence plausible.

In the case of Saba, only one threat was identified by at least three experts as the most significant risk in terms of its potential impact, namely money laundering through gambling. Given the absence of casinos on both Saba and Sint Eustatius, this risk is expected to relate to online gambling and/or lotteries. The results of the email survey that was sent out to experts showed that none of them were familiar with facts/cases of this identified risk; however, some experts found the prevalence of this money-laundering method plausible.

One of the research questions was about money-laundering risks in the BES islands that had not yet been identified, but could arise in the future. In the interviews and expert meeting for this NRA, there was a focus risks relating to money laundering *at this moment*. The subject 'future risks' yielded little information. In the in-depth interviews, the experts referred to the continuing instability in Venezuela, which in the future could lead to an increasing influx of illegally obtained money (for example through corruption or bribery) in the economies of the Caribbean Netherlands, particularly Bonaire, which lies in the proximity of Venezuela. Although the BES islands can be regarded as cash-based economies, the experts suggested that virtual currencies could become a money-laundering risk in the future.

Another research question was about which quantitative data could be used in subsequent NRAs to identify money-laundering risks. Currently there is a lack of data on financial and economic crime on the BES islands. This does not mean data on the prevalence of the identified risks are not available at all. However, the data that *are* available are either limited in nature or may not be shared by supervisory authorities, investigative authorities and other law enforcement authorities, among other things due to privacy legislation.

### **Resilience of policy instruments**

The policy aimed at preventing and combating money laundering in the Caribbean Netherlands is based on the recommendations of the FATF and the policy of the European Netherlands (which is derived from European anti-money laundering directives). The existing policy instruments are:

- Money Laundering and Terrorist Financing Prevention Act BES (Wet ter voorkoming van witwassen en financieren van terrorisme BES, Wwft BES).
- Financial Markets Act BES (Wet financiële markten BES, Wfm BES).
- Dutch Penal Code BES (Wetboek van Strafrecht BES, WvS BES).
- Fiscal legislation.

Resilience concerns the effectiveness of the policy instruments that exist on the BES islands for combating money laundering and mitigating the individual money-laundering risks. This concerns both the scope and the implementation of the policy instruments. In order to gain an insight into the resilience of the policy instruments, relevant reports were studied, interviews were held with experts in both the European and Caribbean Netherlands, and an expert meeting was organised in the European Netherlands. These research activities indicated that the resilience of the policy instruments and the execution of supervision, investigation and law enforcement on the BES islands could be improved. Based on the above-mentioned research activities, various points of attention can be indicated.

One point of attention is related to a number of contextual factors that make the BES islands vulnerable to money laundering. The small scale and enclosure of the island communities, the related culture in which everyone knows each other, and the culture of fear, silence and interests can lead to a limited willingness to declare criminal activities. These factors may also limit the willingness of service providers to report unusual transactions. This leads to a lack of information with respect to investigation, enforcement and supervision. The aforementioned informal economy of the BES islands (mainly cash-based, an informal loan culture and often informal trade flows) also ensures that administration systems are not always complete, making implementation of law enforcement and supervision more difficult.

A further point of attention is the lack of capacity at investigative authorities and other law enforcers on the BES islands. Investigative authorities and other law enforcers perform a relatively large amount of work to combat socio-economic and security problems on the BES islands. The unemployment and poverty of the population on the islands play a role in this. As a result, there is less capacity available for dealing with financial-economic crime, but also for the systematic collection of data on crime.

Another point of attention, which is related to the previous points, is the lack of knowledge and data on financial and economic crime among investigative authorities and other law enforcers on the BES islands. An extra point of attention in this respect is that the data that supervisory authorities, investigative authorities and other law enforcers *do* have may not always be shared with each other.

Aspects that make supervision in the context of the Wwft BES more difficult were also discussed in the expert meeting. The importance of supervisory authorities being able to carry out unannounced inspections at obliged service providers was mentioned. This is difficult to realise in practice, since the supervisory authorities are based in the European Netherlands.

Experts also indicated that the Wwft BES currently does not sufficiently enable supervisory authorities to supervise notaries and lawyers on Bonaire adequately.<sup>94</sup> These independent professionals are not affiliated with the professional associations in the European Netherlands, the Royal Dutch Association of Civil-law Notaries (KNB) and the Netherlands Bar Association (NOvA), respectively. For this reason, these professionals are also not subject to behavioural and professional rules and the disciplinary rules of KNB and NOvA. Lawyers on Bonaire do not cooperate with the supervision of BTW by invoking the right of legal professional privilege. BTW is involved in annual discussions with the notaries on Bonaire about unusual property transactions in public notarial deeds. However, the notaries do not provide access to their financial administration and their transaction files.

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<sup>94</sup> No notaries and lawyers are established on Sint Eustatius or Saba.

Finally, it was mentioned in the expert meeting that DNB is dependent on the supervision by and cooperation with the Central Bank of Curaçao and Sint Maarten, because the seat of licensed credit institutions on the BES islands is located in almost all cases in Curaçao and Sint Maarten.

With regard to the policy instruments, experts in the interviews and the expert meeting recommended to expand the number of types of obliged service providers stated in the Wwft BES. The Wwft BES could also apply to contractors, project developers and the building materials trade, so BTW can also supervise these service providers. This can help to get a better grip on the risks associated with the real estate sector that have been identified for Bonaire. With regard to the policy instruments, they also indicated that a policy instrument such as the Public Administration Probity Screening Act (*Wet Bibob*) in the European Netherlands is currently lacking on the BES islands. This instrument allows for the testing of the integrity of holders and/or applicants for permits and subsidies. This can be particularly useful on Bonaire, more specifically as an examination of (foreign) entrepreneurs/investors in the Bonaire real estate market.

### **In conclusion**

This NRA has provided an insight into what experts consider to be the most significant money-laundering risks in terms of their potential impact in the Caribbean Netherlands and – in general terms – into the resilience of the policy instruments aimed at combating money laundering. Similar to the NRAs for the European Netherlands, the research methodology used for this NRA had a qualitative character in which the judgments and assessments of experts, in particular representatives of supervisory authorities, investigative authorities and other law enforcement authorities, were leading. The latter was due to the limited availability and suitability of data on money laundering and terrorist financing on the BES islands.

For the next NRA for the BES islands, the aim should be to apply a more data-driven research methodology. This would reduce dependence on expert assessments, which may be wholly or partially subjective, and reduce the associated risks. An important note to be made here is that quantitative data on the prevalence and potential impact of money-laundering risks on the BES islands are currently lacking. To compensate for this, this NRA included interviews conducted in the Caribbean Netherlands with representatives of obliged service providers, in addition to interviews with investigative and other law enforcement authorities. In the next NRA for the BES islands, the number of these interviews should be increased, in particular interviews with service providers involved in the real estate market on Bonaire: real estate agents, project developers and contractors. Furthermore, for the next NRA an expert meeting could take place in the Caribbean Netherlands instead of the European Netherlands, so investigative authorities and other law enforcement authorities can also participate.