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Summary
Five years of the Caribbean Netherlands: Working of the legislation

Introduction

The constitutional structure of the Kingdom of the Netherlands changed with effect from 10 October 2010. The country of the Netherlands Antilles was dismantled, Curaçao and Sint Maarten became independent countries within the Kingdom, and Bonaire, Sint Eustatius and Saba became part of the Netherlands as public entities.

The Netherlands Antilles regulations applied on the latter three islands could not be readily applied within the Netherlands legal system and the new constitutional relationships. A substantial legislative operation therefore took place, whereby the content of the Netherlands Antilles regulations was retained as much as possible.

It was agreed that five years after the moment when the three islands were given a constitutional position within the Netherlands' constitutional structure, the implementation of the new constitutional structure would be evaluated. A total of three areas for evaluation are examined: the effect of the legislation, the working of the new administrative structure and the consequences of the transition for the population of the islands. This summary relates to the evaluation of the working of the legislation.

Questions at issue and research methods

The study into the working of the legislation focuses on the following question:

What are the consequences of the choices made with regard to legislation on 10 October 2010 for Bonaire, Sint Eustatius and Saba?

In order to answer the main question, a number of sub-questions have been answered. These sub-questions are clustered within the following areas:

1. Inventory and classification of legislation
2. The islands within the policy formulation process and consultation
3. Legislative reticence
4. Distinctiveness of the islands

rijksuniversiteit groningen

5. Implementation and enforcement
6. Consequences for central government and the islands

The study into the working of the legislation largely comprises an analysis of the regulations introduced on Bonaire, Sint Eustatius and Saba on and after 10 October 2010 and their implementation and enforcement. In preparation for the study an analysis framework and a checklist covering areas of attention for all questions at issue were drawn up in consultation with the supervision committee.

The following research methods were used:

- Exploratory discussions with representatives of the ministries involved;
- General analysis of legislation: analysis of all legislation introduced on and since 10 October 2010;
- In-depth legislative analysis on 17 enacted laws and 3 proposed laws in the following areas:

a) healthcare insurance;
b) taxes, socio-economic and financial legislation,
c) education;
d) employment legislation and the right to reside as an alien;
e) public safety;
f) other legislation;

- Interviews with employees of the public entities, the Rijksdienst voor Caribisch Nederland, ministries in The Hague and representatives of organisations and institutions working and based on Bonaire, Sint Eustatius and Saba.

Legislation in the Caribbean Netherlands and its development

The report starts with a brief explanation of the process which has led to the new constitutional changes within the Kingdom, the most important agreements made and the resultant principles and an explanation of the legislative process.

New constitutional relationships within the Kingdom

An Outline Agreement was concluded on 22 October 2005 between the Netherlands, the Netherlands Antilles and the five islands, whereby it was agreed that the parties would work towards a new constitutional structure. During the mini-conference on 10 and 11 October 2006 which brought together delegations from the Netherlands and the islands of Bonaire, Sint Eustatius and Saba further agreements were made about the constitutional position of the three islands within the Kingdom: the three islands would be established as public entities in the sense of article 134 of the Netherlands Constitution.

The country of the Netherlands Antilles ceased to exist on 10 October 2010, and the new constitutional relationships within the Kingdom came into force. It was agreed that all necessary legislation would have to be modified and had to be introduced on this date. This meant both that the Netherlands Antilles regulations which would apply as Netherlands legislation needed to be adapted to the islands' constitutional position within the Netherlands, and that Netherlands legislation would have to be explicitly declared applicable to the islands, possibly in a modified form, insofar as the decision to do so was made.

Most important agreements and principles

Legislative reticence

One important principle in enacting legislation for Bonaire, Sint Eustatius and Saba is the continuation of Netherlands Antilles regulations. However, all Netherlands Antilles regulations did have to be converted to Netherlands legislation during the transition. It was agreed at the mini-conference in October 2006 that the parties would strive for reticence in introducing Netherlands legislation, and that the Netherlands Antilles regulations would continue to apply as much as possible. This was the first step towards what would later be called 'legislative reticence'. The aim of retaining the Netherlands Antilles regulations – in a substantive sense – for the time being is that not too much should change on Bonaire, Sint Eustatius and Saba in one go. If European Netherlands legislation needs to be introduced, there should be a clear need for this. Account must also be taken of the islands' ability to absorb.

The concept of legislative reticence was introduced by the Minister of the Interior and Kingdom Relations in a debate in the House of Representatives, and meant that lawmakers would respect a period of legislative calm for five years following the transition.

Differentiation

The principle of equal treatment (article 1 of the Netherlands Constitution) means that equivalent cases must be treated equally, regardless of whether one is in the European or Caribbean part of the Netherlands. Conversely, the principle of equal treatment means that non-equivalent cases should not be treated equally, in proportion to the difference. In order to create greater clarity with regard to the grounds which could result in specific regulations or measures being implemented for the islands, the second paragraph of section 1 of the Charter for the Kingdom of the Netherlands (hereinafter: the Charter) contains a specific differentiation provision. This stipulates that specific measures can be implemented for the islands in the Caribbean Netherlands in view of the economic and social circumstances, the great distance from the European part of the Netherlands, their insular nature, small surface area and population, geographical conditions, the climate and other factors in which these islands significantly differ from the European part of the Netherlands.

This study distinguishes two forms of differentiation:

1. differentiation between the Caribbean Netherlands and the European part of the Netherlands;
2. differentiation between Bonaire, Sint Eustatius and Saba.

Decentralisation, local autonomy and subsidiarity

The concepts of decentralisation and local autonomy and the associated principle of subsidiarity are also important in the transition. These concepts relate to the division of tasks and powers between the Kingdom, the country of the Netherlands and the public entities of Bonaire, Sint Eustatius and Saba.

The concept of (local) autonomy refers to the fact that the islands are independent in terms of dealing with their own affairs. Since the transition the islands' autonomy is safeguarded by the WolBES. The system of lists from the Eilandenregeling Nederlandse Antillen (Netherlands Antilles Islands Regulations – ERNA), which specifies which powers applied at country level, is no longer used. As a result the transition has resulted in a fundamental change in the position of Bonaire, Sint Eustatius and Saba with respect to the country of which they

form part; they are now part of a decentralised unitary state, whereby the national tasks are determined at country level, instead of the federal structure with a restrictive package of tasks for the country. The fact that the Caribbean islands have the status of public entity without being a municipality does not significantly alter this.

Two legal systems

The three islands have a separate status within the country of the Netherlands, whereby not all regulations apply to this part of the Netherlands. These regulations mean that since the transition there have been two separate legal systems within the Netherlands: the European Netherlands and the Caribbean Netherlands. This has an effect on the state machinery in both the European Netherlands and the Caribbean Netherlands. For all future new legislation and all legislation being amended consideration must be given to whether this legislation can also apply in the Caribbean Netherlands, or that alternative (tailored) provisions need to be introduced for the islands. Consultation with the public entities is agreed upon for all legislation which could be relevant to the Caribbean Netherlands.

Legislative process

The transition has made Bonaire, Sint Eustatius and Saba public entitities within the Netherlands' constitutional system. As a result of this, the Netherlands Antilles regulations which applied on Bonaire, Sint Eustatius and Saba could not be readily applied within the Dutch legal system and the new constitutional relationships. The existing regulations needed to be converted to Netherlands legislation, and modified when necessary. European Netherlands legislation was also declared applicable on the islands, and specific legislation was drawn up for the islands.

The following legislative activities have taken place:

1. Conversion of Netherlands Antilles regulations to Netherlands legislation
   - Conversion of national ordinances to laws in a formal sense (unless the subject matter is more suited to an Order in Council).
   - Conversion of national decrees to Orders in Council (unless the subject matter is more suited to a law).
   - It was left to the public entities themselves to determine which island ordinances will remain in force (exception possible when included in the Invoeringswet BES (BES Implementation Act)).
2. Amendment of Antilles regulations converted to Netherlands legislation
   - A considerable proportion of the Netherlands Antilles regulations could not be adopted without amendments.
   - In some cases the Antilles regulations conflicted with other (sometimes European Netherlands) regulations.
   - Amendment of the content in a number of areas was also regularly desirable for policy reasons.
3. Declaring European Netherlands regulations applicable
   - The European Netherlands legislation only applies (in full or in part) on the islands if this is expressly stipulated in the relevant law or unequivocally follows from it.
   - Reasons for declaring European Netherlands legislation applicable might be the complete absence of regulation on a particular issue on the islands, or because harmonisation must take place with regard to the issue in question.
   - European Netherlands legislation has also been amended in connection with the new position of Bonaire, Sint Eustatius and Saba as public entities.
4. New Netherlands legislation

- In certain cases new Netherlands legislation has also been introduced on Bonaire, Sint Eustatius and Saba. The choice was made to do this if there was no or inadequate Netherlands Antilles regulation on the islands in a particular area and the minister – because of his general responsibility in that area – had insufficient powers and it was also not deemed desirable to declare that the existing European Netherlands legislation (partly) applied correspondingly.

Findings and analysis

Description of the legislation

The general legislative analysis describes all legislation which came into force in the Caribbean Netherlands on 10 October 2010 and the legislation which was subsequently modified and/or enacted. For this description we have restricted ourselves to laws in the formal sense which apply to Bonaire, Sint Eustatius and Saba and which have been enacted in the period between 10 October 2010 and March 2015. Kingdom Acts, ministerial orders and Orders in Council fall outside the scope of this study. WolBES and FinBES have not been included in this analysis, since they are discussed in detail in the parallel evaluation 'Working of the new administrative structure in the Caribbean Netherlands'.

A total of 259 amended or new provisions have been analysed, involving 425 changes to the law. The 259 laws include 16 new Netherlands laws which have been specifically enacted for the Caribbean Netherlands, together with 3 laws in preparation, namely the Kieswet (Elections Act), the Wet Elektriciteit en Drinkwater BES (BES Electricity and Drinking Water Act) and VROM-BES (BES Housing, Planning and Environment Act).

For each law, lawmakers have decided whether the Netherlands Antillean regulations are used as the starting point (by converting the Antilles regulations to a law in a formal sense, an Order in Council or a ministerial order), or that European Netherlands regulations are declared applicable, or that specific new legislation is drafted. Slightly less than half (115/259) of the laws means a substantive change for the Caribbean islands compared to the Netherlands Antilles, which means that the amendment has changed a material standard and, in conjunction with this, the structure, implementation or enforcement of the law. An example is the introduction of a new tax or a change to the tax rate. An important proportion of the amendments to the legislation are of a technical nature: 92 out of the 259 laws (36%) contain only technical amendments. This involves references to legislation and replacement of terms in connection with the new constitutional relationships, without there being a change to a substantive norm. The remainder (20%) contained amendments of an intermediate category; these are amendments whereby it was not possible to unambiguously establish whether it involves a substantive or technical amendment. This might, for example, relate to transitional law provisions.

The legislative analysis also shows that the explanations for making amendments vary tremendously. For some laws extensive explanation has been provided as to why the law has been substantively amended, but there are also laws where the explanation is scanty. A distinction has been made in this study between general BES regulations, which refers to the various modification laws and orders, and specific BES regulations, including new Netherlands legislation which has been specifically enacted for the Caribbean Netherlands. The explanations for the general BES regulations were generally found to be scanty; the explanations for the specific BES regulations are considerably more detailed.

Legislation enactment process

The legislative operation (with 10 October 2010 as 'sacrosanct' deadline) was an enormous task for both the ministries (a lot of regulations had to be amended or drafted) and the islands (related to their small scale). The Netherlands Antilles' national ordinances had to be converted to laws in a formal sense and other types of Netherlands regulations; European Netherlands legislation had to be declared applicable to the Caribbean Netherlands where necessary.

In determining whether Netherlands Antillean regulations are taken as the starting point or that European Netherlands regulations are declared applicable, ministries in particular looked at the extent to which the provisions from the Antilles regulations were usable. Where specific new legislation has been drafted, the Antilles regulations served as the basis where possible.

There was no overall control from the Ministry of the Interior and Kingdom Relations in the transition process. In the interviews conducted on the islands it was indicated, partly with regard to the quality of the consultation process, that such overall control would have been desirable for the manageability of the transition process on the islands. However, the conscious choice was made not to give the Ministry of the Interior and Kingdom Relations overall control. This choice was due to the pressure of time and the approach of the islands as a special sort of municipality. Direct contact between departments and no key role for the Ministry of the Interior and Kingdom Relations in this regard seems to be appropriate.

There was some collaboration between the three islands, depending on the subject. However, there was no real coordination between the islands. Given their small scale, all proposals were handled by a small group of officials on Bonaire, Saba and Sint Eustatius. Whilst coordination might then seem the obvious path, that is equally obviously undermined by the enormous quantity of proposals. In that regard there was little coordination on the individual islands either.

Consultation

For 50 laws the parliamentary documents specify whether representatives from the islands were consulted during the legislative process. The explanation in the parliamentary documents concerning consultation are very varied, and probably incomplete since they are often brief explanations. The interviews conducted reveal that consultation took place on other legislation as well. The consultation is described in more detail for specific legislation than in the explanation of general BES legislation.

There is a discrepancy between the impression ministries have about the consultation – they indicate that research was carried out, consultation took place and assessments were made about retaining legislation or drafting new legislation prior to or during the transition – and how the islands themselves perceived this. The lack of capacity, time and expertise in the subject matter, tradition, experience and skill in handling consultation processes, and also a lack of balance in the relationship between the island and 'The Hague' led in their view to the fact that the consultation was generally far from successful. The researchers found that although the ministries offered ample opportunity for consultation, this was not implemented in such a way that this accommodated the limitations for the islands to actually be able to utilise the offered opportunity, in view of the small scale characteristics which were known in advance.

The quality of the consultation improved after 10 October 2010. This follows from the general analysis of legislation, which shows a clear difference between general and specific BES

regulations: compared to the general BES legislation, the specific BES legislation involved extensive consultation. Examples of this are the consultations around the Wet Elektriciteit en Drinkwater BES (BES Electricity and Drinking Water Act) and VROM-BES (BES Housing, Planning and Environment Act). The in-depth study also shows that the general experience was that there was more time for consultation later, after 10 October 2010.

Legislative reticence

The wish for continuity in the regulations and reticence in enacting new Netherlands legislation was generally honoured from a quantitative and 'The Hague' perspective, although on balance the islands had to deal with a great deal of new or amended regulation. Virtually every ministry took account of the principle, and national ordinances were used as the starting point for conversion in a policy-neutral way wherever possible; in the case of outdated regulations or specific problems an assessment was made whether new legislation should be enacted. Where that happened in specific areas, this was based on a conscious choice.

The in-depth study examined a number of laws which were new to the islands; this concerns six laws whereby there was a considered deviation from the agreement to gradually introduce Netherlands legislation. The Besluit zorgverzekering BES (BES Medical Insurance Decree) created a new healthcare system. The existing patchwork of different insurance provisions on the island and various impediments constituted grounds for the minister not to be legislatively reticent in this area. The same applies to the Wet op het primair onderwijs BES (BES Primary Education Act). The quality of the education on the islands could only be improved with a new law. The current tax system for the Caribbean Netherlands is also new, and is not based on the Netherlands Antilles or European Netherlands systems. The Antilles system was deemed outdated and too complicated, and the European Netherlands system would take too little account of the special nature of the Caribbean Netherlands.

The perception on the islands that the gradual introduction of Netherlands legislation in the Caribbean Netherlands as agreed during the mini-conference in October 2006 did not really happen is understandable. Firstly, as stated there is a lot of new or amended regulation on the islands. Secondly, exceptions to the principle were made in precisely the areas where the inhabitants of the islands are most affected by the new regulations. This applies, for example, to the Wet financiële markten BES (BES Financial Markets Act) and tax legislation. Thirdly, it is significant that even where there is continuity in regulation, the inhabitants were still confronted with (dramatic) changes, however not at the level of legislation, but at the level of implementation and enforcement of the (existing) legislation. Hence (existing) taxes were collected where that had formerly not happened. Fourthly, it is important to notice that apparently policy-neutral amendments can also have a major impact. This refers to the shift of powers from the islands to 'The Hague', partly as a result of the transition from a federal association to a decentralised unitary state. The researchers did not find evidence that the aforementioned aspects were always clearly discussed in advance with the islands. In any case they note disappointment on the islands with regard to the fulfilment of the agreement about continuity of regulation and the gradual introduction of Netherlands legislation. Whilst the principle of a legislative reticence explicitly applied in the period after 10 October 2010, the researchers found that the vast majority of the amendments to the regulations took place on or around 10 October 2010. The amendments thereafter were – compared to that – moderately minor.

Differentiation

There are two forms of differentiation, namely between the Caribbean Netherlands and the European Netherlands on one hand and between the islands themselves on the other hand.

The latter form occurs rarely. Examples are the Wet minimumloon (Minimum Wage Act), General Expenditure Tax rates and excise duties. Another example of differentiation between the islands is the Wet op het primair onderwijs (Primary Education Act); Saba has been given its own provisions in this law because of its distinct characteristics (in terms of standards). Differentiation with regard to the language used for teaching and education is also worth mentioning here. On Saba and Sint Eustatius in particular it is felt that there is too little differentiation between the islands. This is partly due to differences in scale between the aforementioned islands on the one hand and Bonaire on the other hand.

The study shows that in most cases lawmakers explained (sometimes briefly) why a deviating provision or measure is being applied. The explanation of the differentiation often makes reference to one or more of the justifying grounds from the second paragraph of section 1 of the Charter. However, the argument for differentiation remains superficial: the criteria are generally not further fleshed out or applied on the basis of practical circumstances, partly through the more detailed criteria of suitability, proportionality and subsidiarity. It is unclear to what extent (the failure of) the consultation has played a role here.

Alongside the grounds for justification listed in the second paragraph of section 1 of the Charter, a noticeably large number of specific reasons for differentiation have been cited (72 times). Hence it is often stated that European Netherlands legislation is to all-embracing and complex for the islands, and it is therefore simplified. The fact that the minister has had responsibility since the transition is also cited as a reason for amending the regulations. The (economic or social) interdependence with Curaçao and Sint Maarten was also cited as a reason for the differentiation.

It is noteworthy how differentiation is perceived on the islands in view of the principle of equal treatment and the Charter. Here too a difference between the perceptions and expectations on the islands and in 'The Hague' is evident. For example, on the islands it is felt that too little distinction is made between the islands. It is also felt on the islands that there has been an erroneous failure to differentiate in a number of cases. In this regard reference is regularly made to the legislation relating to abortion, euthanasia and – to a lesser extent – same-sex marriage. The feeling exists that European Netherlands regulations have been imposed here whilst these topics have been discussed for decades in the European part of the Netherlands, and that is felt by many to be a failure to appreciate the distinctive Caribbean culture.

Decentralisation, local autonomy and subsidiarity

The transition of Bonaire, Sint Eustatius and Saba from the country of the Netherlands Antilles to the Netherlands also has consequences which relate to a fundamental difference in structure between the two countries. The Netherlands Antilles constituted a type of federal association, whereby the powers and tasks of the country were specified restrictively (system of lists), and all powers over and above these accrued to the island administration, whilst the Netherlands is a decentralised unitary state. Although its structure is partly characterised by principles of decentralisation and local economy, the term 'unitary state' dominates over the adjective 'decentralised'; primacy lies with central government which, other than in the former Netherlands Antilles with its system of lists, means that the scope of operation for the decentralised authorities – in this case the island administrations of the Caribbean Netherlands – is determined at the central level. This may be an important explanation for the fact that the transition has led to shifts of powers which are evident and unavoidable in view of the structure of the Dutch state, but which represent a significant change – i.e. erosion of powers – for the islands.

It was not found in the context of this study that this fundamental change was considered by lawmakers during the transition process (it was also overlooked in the context of Wol-BES). The explanatory memorandums for four laws refer to decentralisation, local autonomy and subsidiarity. These four laws are the Wet aansprakelijkheid bestuurders, rijbevoegdheid en rijvaardigheid BES (BES Driver's Liability, Authority to Drive and Driving Skills Act), the Veiligheidswet BES (BES Public Safety Act), the Wet Nationale ombudsman (National Ombudsman Act) and the VROM-BES (the BES Housing, Planning and Environment). These laws propose provisions or alternatives to the law to be established by the local administration. The principles of decentralisation, local autonomy and/or subsidiarity are thereby also cited. These terms do not expressly appear in the remaining analysed legislation. That is not to say that little decentralisation has taken place during the constitutional reform, because in a general sense various powers have moved from the ministry to the public entity, for example.

Beforehand it was agreed that as many tasks as possible would be carried out at island level. Nonetheless many tasks which were assigned to the islands have been transferred to the Netherlands. The in-depth study showed that in the majority of the examined laws the powers and implementation are assigned decentrally, on the islands themselves (and specifically to the governor, the Executive Council or the Island Council). A shift has taken place in a number of laws. Licensing and enforcement under the Wet Elektriciteit en Drinkwater BES (BES Electricity and Drinking Water Act) have been assigned to the minister, where it was formerly organised in a decentralised way. The State Secretary for Education has had responsibility for (monitoring) the quality of education since the enactment of the Wet op het primair onderwijs BES (BES Primary Education Act), whilst responsibility for safety at work now lies with the Minister of Social Affairs and Employment, which was not the case prior to 10 October 2010.

Anyone wondering why the agreement that as many tasks as possible would remain with the islands has been breached – partly with the argument of ministerial responsibility – will find a possible explanation in the transition from a federal structure to a decentralised unitary state. An explanation for the misunderstanding and disappointment that has arisen can be found in the lack of knowledge and insight into this aspect both in 'The Hague' and on the islands.

Implementability

The implementability of BES regulations was considered on two levels in the study: in the legislation and in practice. At the level of the legislation the explanations concerning implementability are very varied. There is a difference between general and specific legislation; with the specific BES legislation the explanations are far more extensive, and issues relating to implementability and enforceability recur in a structured manner. One example is the VROM-BES legislation (BES Housing, Planning and Environment Act), where the legal instruments are discussed in detail.

The implementability in practice is variable. The representatives from the islands identify relatively few impediments with regard to the implementation of legislation. It should thereby be taken into account that the criticism is not always aimed at the implementability but also at the consequences of a law. Examples of this are the Wet minimumloon BES (BES Minimum Wage Act), where the minimum wage is felt to be much too low, and the Besluit zorgverzekering BES (BES Medical Insurance Decree), whereby physiotherapy and dental care fall outside the basic package, whilst supplementary medical insurance is not offered in

the market for practical reasons (the small number of inhabitants) and can therefore not be taken out.

Laws and regulations of which the implementability is perceived negatively on the islands themselves are particularly:

- the Arbeidsveiligheidswet BES (BES Safety at Work Act), where the rules are felt to be unclear and the standards too ambitious;
- Wet arbeid vreemdelingen BES (BES Aliens Employment Act), which leads to lengthy procedures, partly as a result of an obligatory five-week period during which the vacancy must be open to the local labour market, which many people believe does not exist;
- Vestigingswet BES (BES Establishment Act), that is viewed as an empty shell whereby compliance with the requirements stipulated for establishments is said to be open to manipulation and cannot be checked.

The Prijzenwet BES (BES Prices Act), the Veiligheidswet BES (BES Public Safety Act), Wet administratieve rechtspraak BES (BES Administration of Administrative Justice Act) and the Wet op het primair onderwijs BES (BES Primary Education Act) are generally deemed to be readily implementable on the islands.

It is acknowledged on the islands that progress is being made in certain areas, particularly education and healthcare. This is partly attributable to new regulations and their (successful) implementation, partly to greater attention paid to the enforcement of (possibly existing) regulations, and partly to other factors such as the availability of (financial) resources in order to carry out renovation and construction work.

Finally it is particularly noted on the islands that the combination of legislation in different areas can have unfortunate consequences for (certain groups within) the population. One example of this is the combination of the generally high prices, double taxation and the inability to get a mortgage. Reference was also frequently made during the interviews to the difficult position of people in poverty or people who are reliant on a small pension. Virtually no attention seems to have been paid to such cumulative effects when considering whether differentiation should take place with respect to the European part of the Netherlands.

Enforceability

The enforceability of BES regulations was also considered on two levels in the study: in the legislation and in practice. At the level of the legislation the explanations are again very varied. Once again there is a difference between general and specific legislation; with the specific BES legislation the explanations are far more extensive, and issues relating to implementability and enforceability recur in a structured manner.

In practice enforcement has improved since the transition, but there are also shortcomings. The improvements relate to more attention being paid to enforcement in general and supervision in particular; checks on compliance are actually being carried out in certain areas. The professionalisation of the supervision and the intensification of inspections contributes to compliance, not only through the use of strict enforcement tools, but also through guidance (support).

The enforceability of regulations on the islands is being negatively influenced by a lack of capacity and expertise with regard to supervision and enforcement. Progress has been made on policy development on all three islands. To what extent the actual enforcement

has improved using the administrative enforcement tools is less clear. On Sint Eustatius the enforcement of administrative legislation through administrative bodies is not really happening: enforcement is left to the police and judicial authorities. Certain traditions in the method of enforcement on all three islands seem to persist. For Saba one can thereby point to the emphasis on informal dispute resolution.

Specific problems with the examined legislation were found with the Arbeidsveiligheidswet BES (BES Safety at Work Act), where the practice lags far behind the standards (which are too European according to those involved), and powers are also lacking. With the Wet toelating en uitzetting BES (BES Entry and Deportation Act) the (virtual) absence of a population register is a major drawback in enforcement. The same applies to the enforcement (collection) of the Property Tax. The Vestigingswet BES (BES Establishment Act) can only be enforced because the requirements stipulated for establishments can be manipulated and cannot be checked.

With regard to tax law, incidentally, taxes have been collected systematically and without exception since 10 October 2010. This is a significant change compared to the previous situation. The result is that the tax burden is perceived as being greater.

Answers to the research questions

The study into the working of the legislation addressed the following question:

> *What are the consequences of the choices made with regard to legislation on 10 October 2010 for Bonaire, Sint Eustatius and Saba?*

In order to answer the main question, a number of sub-questions have been answered, clustered in six topics. We will provide the main findings for each topic.

1. *Inventory and classification of legislation*

A significant proportion of the 259 laws which were amended or enacted during and after the transition are of Netherlands Antilles origin (62%). Substantive amendments took place in a large proportion of these provisions (44%). Substantive amendments include changes which relate to the structure, implementation or enforcement of the law. *Only* technical amendments have taken place in one third of the provisions (change of definitions or references to legislation). With the remaining laws the amendments to laws comprise more than just technical amendments, but the changes cannot be classified as 'substantive'; these provisions have been allocated to the 'other' category (20%).

The assessment of whether to continue Netherlands Antilles regulations or to adopt European Netherlands legislation was made for each law by the ministries prior to 10 October 2010. An important principle was that where possible Netherlands Antilles regulations would be continued. Where European Netherlands legislation has been introduced, this has sometimes been explained in detail. That explanation often relates to the change in the constitutional relationships, as a result of which the allocation of powers must be altered and the minister has been empowered. Other reasons cited are that the Netherlands Antilles legislation was outdated and updating was urgently required. Sometimes there were specific problems which necessitated the introduction of new legislation.

2. *The islands within the policy formulation process and consultation*

The constitutional transition was a major job in terms of legislation. A large number of provisions needed to be enacted for the Caribbean Netherlands within a short timeframe. Formally speaking the duty of consultation was clearly implemented: the ministries did a lot of work to involve the islands well in the legislative process. However, because of the scale and intensity of the transition progress on the one hand and extremely limited staffing (compared to the ministries) on the other hand, it was generally impossible for the islands to adequately utilise the opportunities for consultation on offer. The fact that the islands had to deal separately with all ministries (a conscious choice was made not to give overall control to the Ministry of the Interior and Kingdom Relations) played a role in this.

3. *Legislative reticence*

The principle of continuing Netherlands Antilles legislation and gradually introducing Netherlands legislation has been fulfilled to a reasonable extent. That does not detract from the fact that there is an impression on the islands that intrusively amended laws have been enacted in many areas. A number of factors have influenced this alongside the scale and intensity of the transition process: changes in regulations in precisely those areas which are of particular significance to the inhabitants (such as taxes and the financial markets); changes not at the level of regulation but at the level of implementation and enforcement (e.g. collection of taxes); cumulative effects of changes and shifts in powers (from the federal association of the Netherlands Antilles to the decentralised unitary state of the Netherlands, as a consequence of which powers shifted to the minister).

4. *Distinctiveness of the islands*

Generally speaking differentiation between the European Netherlands and the Caribbean Netherlands has been explained, but the explanations are not particularly thorough. In many cases those explanations referred back to section 1, second paragraph of the Charter, without this being further justified on the basis of the special characteristics of the islands and the requirements of subsidiarity and proportionality. A number of reasons for differentiation have also been put forward which do not refer back to grounds explicitly stated in the Charter. The need which is very strongly felt on the islands for differentiation with regard to the issues of abortion and euthanasia, and to a lesser extent also same-sex marriage, has been ignored. There has been little differentiation between the islands themselves.

5. *Implementation and enforcement*

The implementation of legislation on the islands shows a varied picture. In certain policy areas the information which is relevant to implementation (and enforcement) is still missing in certain regards. The island administrations have made progress in the area of policy development. This also applies to the enforcement where European Netherlands inspectorates have started to operate on the islands. There are indications that the administrative enforcement of administrative law is less effective. Areas where a clear improvement can be seen after 10 October 2010 are education and healthcare, although impediments have also been identified there. In addition, there are areas where larger impediments are identified, such as the regulation of financial markets.

6. *Consequences for central government and the islands*

It is quite clear that the transition process has made exceptional demands of the ministries and the islands. Many provisions had to be amended. That also had to be done in such a way that it did justice to what must be viewed to a certain extent as a merger of two legal systems: the European Netherlands system and the Caribbean Netherlands system, which also both had to meet the requirements of consistency. This is the logical consequence of

the choice not to declare European Netherlands law fully applicable on the islands. As long as this choice remains in force, the ministries will have to repeatedly maintain multiple provisions alongside one another and coherently. Although the pressure of the transition process has now passed, the islands continuously have to deal with communication processes with the various ministries under the current arrangement.

Conclusion: successes, disappointments and challenges

Bonaire, Sint Eustatius and Saba and the ministries have done an exceptional amount of work together. Large numbers of regulations has been amended in accordance with the principles and objectives and within a relatively short timeframe. Implementation and enforcement have improved in some areas. Next to the successes there are disappointments as well, particularly on the islands. A significant part of those disappointments relate to the expectations which existed around ('the magical') 10 October 2010. They are contained in a number of the findings listed above. This refers to:

- the practical impossibility for island administrations (and civil organisations on the islands) to give real meaning to the consultation due to the enormous scale of the transition (and pressure of time): people were simply unable to respond to the ministries' best consultation intentions;
- the substantial shift – sometimes in stages – in the regulations for the islands towards European Netherlands legislation, despite the principle of continuity and gradual introduction of Netherlands legislation: on balance there is a lot of new or amended regulation;
- The shift of powers from the island administration to 'The Hague' which was not made very clear in advance, partly as a result of the transition from a kind of federal structure (Netherlands Antilles) to a decentralised unitary state (the Netherlands);
- changes in the area of implementation (such as tax legislation) and enforcement (particular by inspectorates) which already involve a major change of direction separate from amendments to the law;
- the expectation on the islands that direct links with the Netherlands would result in the level of provisions in a general sense being raised to a higher level, in view of the principle of equal treatment contained in article 1 of the Constitution and section 1, second paragraph of the Charter.

These points not only imply a retrospective assessment of the expectation management at the time, but also place identified shortcomings in the transition process in context. After all, the assessment that one makes of the end-result depends partly on the expectation is that one had beforehand. It is more important to learn from the past and look to the future. One must then conclude that five years after 10 October 2010 the Netherlands and its Caribbean islands still face many challenges. Account must thereby be taken of the fact that certain distinctive characteristics of the islands are a given. One must particularly thereby think of the small scale. But alongside the differences in regulation, sociological and cultural differences will continue to have consequences for aspects including the consultation process and the implementation and enforcement.