

Decision designating DNB supervisors for the Caribbean Netherlands

Decision of De Nederlandsche Bank N.V. of 22 August 2012 designating persons to be charged with supervising compliance with the provisions laid down by or pursuant to the Financial Markets (BES Islands) Act, the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act and the Pensions (BES Islands) Act (Decision designating DNB supervisors for the Caribbean Netherlands) [Besluit aanwijzing toezichthouders DNB voor Caribisch Nederland]

DE NEDERLANDSCHE BANK N.V.;

Having regard to sections 7:4 to 7:11 of the Financial Markets (BES Islands) Act (Bulletin of Acts and Decrees 2011, 612);

Having regard to section 5.4, subsections 1 and 3, section 5.5, subsections 1 and 3, and section 5.7 of the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act (Bulletin of Acts and Decrees 2011, 613);

Having regard to section 19a of the Pensions (BES Islands) Act (Bulletin of Acts and Decrees 2010, 597);

DECIDES:

Article 1

In this decision the following terms have the following meanings:

- a) *DNB*: De Nederlandsche Bank N.V.;
- b) *Wfm BES*: the Financial Markets (BES Islands) Act (*Wet financiële markten BES*) (Bulletin of Acts and Decrees 2011, 612);
- c) *Wwft BES*: the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES*) (Bulletin of Acts and Decrees 2011, 613);
- d) *Pw BES*: the Pensions (BES Islands) Act (*Pensioenwet BES*) (Bulletin of Acts and Decrees 2010, 597).

Article 2

The persons charged with supervising compliance with the provisions laid down by or pursuant to the Wfm BES, the Wwft BES and the Pw BES are the employees of DNB who have the position of business analyst, supervisor or supervisor-specialist, as well as the division directors and department heads of the relevant organisational units of DNB that are charged with exercising supervision over financial institutions under the Wfm BES, the Wwft BES and the Pw BES.

Article 3

The *Decision designating DNB supervisors for the public bodies BES* (Government Gazette 2011, 6485) is repealed.

Article 4

This decision will enter into force on the day after the date of the Government Gazette in which it is published and will have retroactive effect to 1 July 2012.

Article 5

This decision may be cited as: Decision designating DNB supervisors for the Caribbean Netherlands.

This decision, together with the Explanatory Memorandum, will be published in the Government Gazette.

Amsterdam, 22 August 2012

De Nederlandsche Bank N.V.

A.J. Kellermann, director

J. Sijbrand, director

Explanatory Memorandum

The purpose of this decision is to designate employees of DNB who are responsible for supervising compliance with the financial supervision legislation for the public bodies of Bonaire, St Eustatius and Saba (the BES Islands, also known as the Caribbean Netherlands or CN). This concerns supervision of compliance with three items of supervision legislation: the Financial Markets (BES Islands) Act (*Wet financiële markten BES / Wfm BES*), published in Bulletin of Acts and Decrees 2011, 612; the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES / Wwft BES*), published in Bulletin of Acts and Decrees 2011, 613¹; and the Pensions (BES Islands) Act (*Pensioenwet BES / Pw BES*), published in Bulletin of Acts and Decrees 2010, 597². This designation decision implements section 7:4 of the Wfm BES, section 5.4, subsections 1 and 3, of the Wwft BES and section 19a of the Pw BES.

¹ The majority of the provisions in the Wfm BES entered into force on 1 July 2012. This was regulated in the *Decree of 22 May 2012 adopting the date of entry into force of the Financial Markets (BES Islands) Act, the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act, the Financial Markets (BES Islands) Decree and the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Decree* (Bulletin of Acts and Decrees 2012, 240).

² The Pw BES entered into force on 10 October 2012; see Bulletin of Acts and Decrees 2010, 387.

The DNB employees designated in this decision have the status of supervisor and therefore have a number of information and investigation powers essential to supervising compliance with the provisions laid down by or pursuant to the supervision legislation for the Caribbean Netherlands, in so far as DNB is responsible for exercising this supervision. This concerns the power to enter any location (with the exception of residential premises without the consent of the occupant), the power to require a person to provide information, the power to demand inspection of business data and documents and the power to demand production of a proof of identity as referred to in section 2 of the Compulsory Identification (BES Islands) Act (*Wet op de identificatieplicht BES*).

In the case of the Wfm BES and Wwft BES these powers of supervisors are contained in sections 7:7-7:10 of the Wfm BES (see also the reference to the provisions of section 5.5, subsection 1, of the Wwft BES). In the case of supervision of compliance with the Pw BES these powers result from Title 5.2 of the General Administrative Law Act (*Algemene wet bestuursrecht / Awb*) applicable in the country of the Netherlands. This is largely declared applicable *mutatis mutandis* in section 19a, subsection 3, of the Pw BES.

Under section 7:6 of the Wfm BES and section 5:13 of the Awb, a supervisor designated by this decision may exercise his or her powers only in so far as this can reasonably be deemed necessary for the performance of his or her duties. Under section 7:5 of the Wfm BES and section 5:12 of the Awb, the designated employees of DNB also have a duty to identify themselves and therefore carry proof of identity with them.

Under section 7:11 of the Wfm BES, section 5.7 the Wwft BES and section 5:20 of the Awb (as regards the supervision of pension funds as referred to in the Pw BES) every person is obliged to cooperate fully with a supervisor designated in this decision within such reasonable period as he or she may specify and in such a way as he or she considers reasonably necessary for the exercise of his or her powers. In the event of a breach of this duty of cooperation DNB may take enforcement action, for example by imposing a cease and desist order or an administrative fine.

As regards the Sanctions Act 1977 (*Sanctiewet 1977*) it should also be noted that Title 5.2 of the Awb applies to employees of DNB who are responsible for supervising compliance with this act by financial institutions operating in or from the Caribbean Netherlands. This follows from section 14, subsection 2, of the Sanctions Act 1977.

Article 3 sets out that the predecessor of this designation – the *Decision designating DNB supervisors for the public bodies BES* (published in the Government Gazette 2011, 6485) – is repealed. Article 4 makes limited provision for the entry into force of this decision with retroactive effect, namely to 1 July 2012. Finally, article 5 sets out the short title of this decision, which needs no further explanation.

De Nederlandsche Bank N.V.,

A.J. Kellermann, director

J. Sijbrand, director