



Ministry of Infrastructure  
and Water Management

## Establishments and Activities Decree BES

### [Information and disclaimer](#)

This document is a courtesy translation and not an official legal document.

The Dutch text contains the applicable legislation.

This translation is based on the official publication in Dutch of:

Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

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## **Decree of 20 December 2023, containing rules regarding establishments and activities, environmental impact assessment and the quality of inspection and enforcement, to protect the physical living environment in Bonaire, Sint Eustatius and Saba (Establishments and Activities Decree BES)**

We Willem-Alexander, by the grace of God, King of the Netherlands,  
Prince of Orange-Nassau, etc. etc. etc.

On the nomination Our Minister of Infrastructure and Water Management of  
18 August 2023, No. IENW/BSK-2022/228899, Main Directorate for  
Administrative and Legal Affairs;

Having regard to articles 1.2(3), 1.3, 5.1(1)(2)(4), 5.4(1)(3)(5), 5.6(2),  
5.7(2), 5.9(1)(2), 5.14(4), 5.21(1)(2)(3), 5.25(6), 5.39(3), 6.1(1)(2)(4),  
7.1(1)(4), 8.6(2a), and 10.9(1)(2)(3), of the BES Public Housing, Spatial  
Planning and Environmental Management Act;

Having heard the Advisory Division of the Council of State (Opinion of 8  
November 2023, No. W17.23.00228/IV);

Having regard to the further report of the Minister for Infrastructure and  
Water Management of 14 December 2023, No. IenW/BSK-2023/343615,  
Main Department for Administrative and Legal Affairs;

Have agreed and understood:

## CHAPTER 1 GENERAL PROVISIONS

### **Article 1.1 Definitions**

In this decree and the provisions based on it, the following definitions  
apply:

*Executive Council*: Executive Council of the public body of Bonaire, Sint  
Eustatius or Saba;

*buffer zone sensitive area*:

- a. zone surrounding a sensitive area designated as a nature reserve as defined  
under the BES Principles of Nature Management and Protection Act;
- b. zone of 500 metres around a sensitive area notified as a wetland of  
international importance;

*Island Council*: island council of the Public Entity of Bonaire, Sint Eustatius or  
Saba;

*sensitive area*:

- a. area designated as a nature reserve under Art. 2a or 10 of the BES Principles of  
Nature Management and Protection Act;
- b. area designated as a wetland of international importance under the  
Agreement on Wetlands of International Importance, especially as a Habitat for  
Aquatic Birds of 2 February 1971 (Trb. 1975, 84);
- c. area designated as a protected area under the BES Principles for Land Use  
Planning Act in a current development plan;
- d. cultural heritage, being the monuments, town and village views and  
archaeological heritage referred to in Art. 1 of the BES Monuments Act;

*unusual occurrence*: unusual occurrence referred to in Art. 8.1(1) of the Act;

*act*: BES Public Housing, Spatial Planning and Environmental Management Act.

### **Article 1.2 Categories of establishments**

(1) The categories of establishments referred to in Art. 1.2(3) of the Act are

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those listed in Annex 1 to this decree.

- (2) In this decree and the provisions based on it, a:
- a. Type I establishment: establishment designated as Type I in Annex 1;
  - b. Type II establishment: establishment designated as Type II in Annex 1;
  - c. Type III establishment: establishment designated as Type III in Annex 1;
  - d. Type IV establishment: establishment designated as Type IV in Annex 1.

### Article 1.3 Competent authority

- (1) The Executive Council is the competent authority with regard to Type I, Type II and Type III establishments.
- (2) Our Minister is the competent authority with regard to Type IV establishments.

### Article 1.4 Duty of care

- (1) A person operating a Type I, II, III or IV establishment who knows or could reasonably have known that it causes or may cause adverse effects on the environment that cannot or cannot adequately be prevented or mitigated by compliance with the rules laid down in or pursuant to this Decree, is obliged to take all measures that can reasonably be required of him to prevent such effects.
- (2) If prevention of the adverse effects referred to in paragraph 1 is not possible, the person is obliged to limit or undo these effects as much as possible.
- (3) Preventing, mitigating or reversing the occurrence of adverse effects means:
- a. efficient use of energy and raw materials;
  - b. preventing or, to the extent that this is not possible, minimising:
    - 1°. soil contamination;
    - 2°. groundwater contamination;
    - 3°. contamination of surface water;
    - 4°. air contamination;
    - 5°. noise nuisance;
  - c. preventing or, to the extent that this is not possible, reducing to an acceptable level:
    - 1°. odour nuisance;
    - 2°. light nuisance;
    - 3°. dust nuisance;
    - 4°. vibration nuisance;
  - d. preventing or, in so far as this is not possible, minimising the adverse effects on the environment of the movement of persons and goods to and from the establishment;
  - e. the prevention of risks to the environment and adverse events or, in so far as this is not possible, the minimisation of risks to the environment and the likelihood of adverse events occurring and their consequences;
  - f. ensuring a good state of repair of the establishment;
  - g. the efficient operation of waste water management facilities;
  - h. the efficient management of waste water, waste and energy;
  - i. protecting darkness and the dark landscape in areas designated by the competent authority.

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## CHAPTER 2 RULES FOR TYPE I AND TYPE II ESTABLISHMENTS

### Article 2.1 Quality criteria

- (1) The person operating a Type I or II establishment shall comply with the quality criteria to be laid down by ministerial regulation as well as with the further rules laid down by island ordinance.
- (2) The quality criteria to be laid down by ministerial regulation shall in any case cover the following subjects:
  - a. the efficient management of waste;
  - b. the efficient operation of waste water management facilities;
  - c. the efficient management of waste water and reducing the amount of waste water;
  - d. preventing pollution of surface water;
  - e. protecting the coral-reef ecosystem;
  - f. protecting soil and groundwater quality;
  - g. prevention of soil contamination;
  - h. preventing or reducing nuisance from noise, light, vibration and odour;
  - i. protecting air quality;
  - j. preventing or reducing fugitive emissions to air;
  - k. ensuring safety;
  - l. protecting health;
  - m. the economical use of raw materials;
  - n. efficient use of energy.
- (3) The Island Council shall lay down further rules as referred to in Art. 5.1(4), of the Act, regarding the quality criteria referred to in sub-section 1, which relate to the subjects referred to in paragraph 2.

### Article 2.2 Type II establishment notification

- (1) A person who establishes, alters or changes the operation of a Type II establishment shall report this to the competent authority referred to in Art. 1.3(1).
- (2) The notification shall be made no later than four weeks before the date on which the establishment, alteration or change of operation is due to take place.
- (3) Notification is not required if a notification has already been made in accordance with this article and there is no deviation from the information provided in that previous notification.
- (4) A notification shall include at least the following information:
  - a. name, address, telephone number and e-mail address of the person who establishes, changes or alters the operation of the establishment;
  - b. name, address and cadastral plot number of the establishment;
  - c. registration number of the company with the Chamber of Commerce;
  - d. intended time of establishment or change of establishment;
  - e. nature and scope of the establishment's activities;
  - f. number of the building permit.

### Article 2.3 Provisions for customised rules as referred to in Art. 5.4(3) of the Act for Type I and II establishments

- (1) The Executive Council may, ex officio or at the request of the person operating a Type I or Type II establishment, establish provisions for a customised rule as referred to in Art. 5.4(3), of the Act, if such

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regulations relate to quality criteria to be established by ministerial regulation or island ordinance and offer a higher or equivalent level of environmental protection than the provisions pursuant to Art. 2.1(1)(2)(3).

- (2) The competent authority:
  - a. Takes into account the operating conditions of the establishment; and
  - b. sets a reasonable time limit in the judgement for each requirement to be implemented.
- (3) The competent authority shall give public notice of the judgement, in which a provision for a customised rule as referred to in paragraph 1 is stipulated, in one or more local newspapers and furthermore in the manner customary for publication of official notices, and shall make the decision available for consultation for six weeks.

## CHAPTER 3 RULES FOR TYPE III and TYPE IV ESTABLISHMENTS

### Article 3.1 Permit requirement

A person who establishes, operates, changes the nature or the operations of a Type III or IV establishment shall apply in writing to the competent authority referred to in Art. 1.3 for a permit as referred to in Art. 5.1(2) of the Act.

### Article 3.2 Type III establishment permit application

- (1) The following information shall accompany the application for a permit for a Type III establishment:
  - a. name, address, telephone number and e-mail address of the person setting up or changing the nature of the establishment or changing its operation;
  - b. name, address, telephone number and e-mail address of the person who runs or will run the establishment, if this person is different from the person referred to in point a;
  - c. address, cadastral designation and location of the establishment;
  - d. a copy of or extract from what has been recorded about the establishment in the Trade Register or deposited there pursuant to statutory regulations;
  - e. The nature, layout and design of the establishment;
  - f. the activities and processes carried out at the establishment and the techniques or equipment to be used for this purpose, including the method of supplying energy, in so far as they may reasonably be relevant to the assessment of the adverse effects on the environment which the establishment may cause;
  - g. data characteristic of the activities and processes referred to in point f relating to raw materials and intermediate products, by-products and end products;
  - h. the maximum capacity of the establishment and the total rated motor or thermal input power of the installations belonging to the establishment;
  - i. the times and days when, or periods during which, the establishment or its various parts will operate;
  - j. a situation sketch, not exceeding a scale of 1:10,000 showing the location of the establishment in relation to its surroundings and marked with a north arrow;
  - k. detailed drawings of the installations belonging to the establishment and locations where emissions occur;
  - l. the nature and extent of the environmental pressures that the

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- establishment is likely to cause during regular operation, including an overview of the main adverse effects on the environment likely to be caused thereby;
- m. the measures or facilities for the purpose of:
    - 1°. preventing or, insofar as this cannot be prevented, minimising the generation of waste in the establishment;
    - 2°. recovery, or making suitable for recovery, of the waste generated at the establishment;
    - 3°. storing the waste in the establishment;
    - 4°. the disposal of waste generated at the establishment;
  - n. the nature and content of any other measures or arrangements taken or to be taken to prevent or, in so far as they cannot be prevented, to minimise adverse effects on the environment which the establishment may cause;
  - o. developments reasonably foreseeable for the applicant with regard to the establishment, which may be relevant for the decision on the application;
  - p. an indication of the largest containment system, the maximum amount of substance that may be present therein, an indication of the substance involved, the location of the containment system in the establishment, the pressure and temperature of the substances and preparations involved in the containment system;
  - q. the location of pipelines in the establishment;
  - r. where applicable, an environmental impact assessment;
  - s. any other information, in so far as the applicant possesses it or may reasonably have access to it and which, in the opinion of the competent authority, is reasonably necessary for making a decision on the application.
- (2) The application shall be accompanied by a non-technical summary of the data referred to in paragraph 1.
  - (3) Documents accompanying the application shall be certified by or on behalf of the applicant as belonging to the application.
  - (4) If the establishment for which the permit is sought is temporary by its nature, the applicant shall state this in the application, also indicating the period during which the establishment is or will be in operation.
  - (5) The information mentioned in paragraphs 1 and 2 need not be provided to the extent that the competent authority already has that information.

### Article 3.3 Type IV establishment permit application

- (1) When applying for a permit for a Type IV establishment, the applicant shall provide the information referred to in Art. 3.2, and:
  - a. A quantitative risk analysis;
  - b. written information on how, during the operation of the establishment, the environmental impact caused by the establishment is determined and recorded;
  - c. A safety report as referred to in Art. 8.6(1) of the Act.
- (2) The application for a permit referred to in paragraph 1 shall also include, at the request of Our Minister, information relating to:
  - a. unusual occurrences, which can reasonably be considered possible;
  - b. the nature and extent of the environmental pressures to be distinguished in the events referred to in part a;
  - c. the measures taken to prevent or reduce as far as possible the impact on the environment which the establishment can cause as a result of the events referred to under a, insofar as they cannot be prevented;
  - d. the results of a soil quality survey at the site where the establishment is or will be located.

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- (3) The data referred to in paragraphs 1 and 2 need not be provided to the extent that Our Minister already has such data.

#### **Article 3.4 Type III and IV establishments best available techniques**

- (1) For the purposes of the permit, the competent authority shall consider at least the following when determining the best available techniques for Type III and IV establishments:
- the application of techniques that generate little waste compared to other techniques to be used for the purpose in question;
  - the application of techniques using substances that, compared with other substances to be used for the purpose in question, are the least hazardous and least harmful to humans and the environment;
  - the development of techniques for recovery and reuse of substances and wastes emitted and used in processes at the establishment;
  - comparable processes, devices or modes of operation that have been applied in practice with good results;
  - the development of scientific understanding and technical progress with regard to environmental protection;
  - the nature, effects and scale of the emissions concerned;
  - the dates on which the facilities at the establishment have been or will be put into operation;
  - the time it takes to adopt a technique that offers more environmental protection than the previous one;
  - consumption and nature of raw materials, including water, and energy efficiency;
  - the need to prevent or minimise the overall impact of emissions on and risks to the environment;
  - the need to prevent accidents and minimise their impact on the environment;
  - information published by international governmental or non-governmental organisations relating to the determination of best available techniques; and
  - other information relating to the determination of best available techniques.
- (2) The competent authority shall determine the best available techniques considered for an establishment in each case partly on the basis of the:
- nature and type of the establishment and the state of the systems and processes therein;
  - prevailing agreements on the development of techniques;
  - geographical circumstances;
  - local environmental conditions.
- (3) Further rules on the content of the best available techniques and on how this article is implemented may be laid down by ministerial regulation.

#### **Article 3.5 Type III and IV establishments notification of change**

In a notification as referred to in Art. 5.25(1)(opening words and under b) of the Act, of the intention to carry out a change to an establishment, the permit holder shall provide the following information:

- their name, address, telephone number and e-mail address;
- the permit or permits under which the establishment is established or in operation;
- the intended change to the establishment or its operation;
- the information showing which parts and to what extent the permit or permits referred to in part b and the restrictions and regulations attached thereto are deviated from;
- A situation sketch showing the intended change;

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- f. information demonstrating that the proposed change to the establishment or its operation will not cause any adverse effects on the environment different from, or in excess of, those which the establishment is permitted to cause under the permit and the restrictions and conditions attached thereto; and
- g. The intended time of realisation of the intended change.

### Article 3.6 Public notification

- (1) The declaration referred to in Art. 5.25(1)(c) of the Act shall be made available for consultation and notice of the declaration shall be published in one or more local newspapers and, further, in the manner customary for publication of official notices.
- (2) The competent authority shall make notification of at least:
  - a. the business content of the declaration;
  - b. the time and location where the declaration and related documents may be inspected;
  - c. Understanding whether there is or will be an environmental impact assessment procedure;
  - d. Understanding whether there is or will be potentially significant adverse effects on a sensitive area.
- (3) In cases where a declaration concerns a Type IV establishment, Our Minister may omit all or part of the notification referred to in paragraph 1 to the extent that the interests of state security so require.

### Article 3.7 Financial security permit

- (1) The competent authority may include in the permit a requirement that the person who establishes, alters or changes the operation of, operates or terminates a Type III or Type IV establishment provide financial security:
  - a. for compliance with the obligations imposed by the permit; or
  - b. to cover liability for potential damage to the environment that may result from the establishment, alteration or change in operation, operation or cessation of operation of the establishment.
- (2) The financial security shall not exceed the reasonably foreseeable costs necessary to fulfil the obligations under that permit or to cover liability for damage resulting from adverse effects on the environment.
- (3) The commitments referred to in paragraph 1(a) and 1(b) shall be made for the period specified in the relevant permit for that purpose.

## CHAPTER 3A CATEGORIES OF PERSONS

### Article 3.1a Categories of persons belonging to Art. 1.2(1) of the Act

The categories of persons referred to in Art. 1.2(1) of the Act, in defining the term 'bathing establishment', are designated:

- a. persons having access to a bathing establishment, other than a publicly accessible bathing establishment or a private bathing establishment, in a specific capacity other than that referred to in part b;
- b. persons receiving care in an institution as referred to in Art. 1(k) of the BES Healthcare Institutions Act, or an establishment in which the profession of physiotherapy is practised clinically or on an outpatient basis.

## CHAPTER 4 ENVIRONMENTAL IMPACT ASSESSMENT

### Article 4.1 Environmental Impact Assessment

- (1) The activities referred to in Art. 7.1(1)(a) of the Act are those belonging to a category defined in column 1 of Annex 2, Part B, of this Decree.



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- (2) Activities referred to in Art. 7.1(1)(b) of the Act are designated as:
  - a. activities belonging to a category defined in column 1 of Annex 2, Part C, to this Decree;
  - b. all other activities that may have significant adverse effects on the nature or natural values of a sensitive area or buffer zone sensitive area, or that may seriously mar the landscape of the sensitive area or buffer zone sensitive area, or for which a permit is required, which relates or partly relates to the protection of the environment or part of the environment.
- (3) The categories of orders referred to in Art. 7.1(2) and (3), respectively, of the Act are designated as those listed in Annex 2, part B, column 4, and Annex 2, part C, column 3, respectively, of this Decree.
- (4) The plans listed in Annex 2, Part B, column 3, to this Decree shall be designated as categories of plans as referred to in Art. 7.1(4), of the Act, to the extent that such plans form a framework for a decree belonging to a category designated pursuant to Art. 7.1(2), of the Act and to the extent that such plans have not been designated as categories of decrees referred to in paragraph 3.
- (5) By ministerial regulation, per Public Entity, with a view to protecting the environment, other activities, decrees and plans can be designated than the activities, decrees and plans designated pursuant to paragraph 1 through 4.

## CHAPTER 5 INSPECTION AND ENFORCEMENT OF THE PHYSICAL LIVING ENVIRONMENT

### Article 5.1 Inspection and enforcement policy

- (1) Our Minister and the Executive Council entrusted with the administrative law enforcement referred to in Art. 10.2 of the Act shall each determine the inspection and enforcement policy. The compliance and enforcement policy is established for a period of at least one calendar year.
- (2) The inspection and enforcement policy shall specify at least:
  - a. the objectives and set priorities of Our Minister and the Executive Council in terms of inspection and enforcement;
  - b. the activities planned to achieve the objectives and priorities;
  - c. a risk analysis on which objectives and priorities have been set; and
  - d. The capacity required to implement the inspection and enforcement policy.
- (3) The inspection and enforcement policy further provides insight into:
  - a. the compliance strategy and additional inspection and enforcement tools;
  - b. the agreements made by Our Minister and the Executive Council with the other relevant administrative bodies and bodies in charge of criminal enforcement on cooperation in and coordination of work.
- (4) Our Minister and the Executive Council coordinate the inspection and enforcement policy with the relevant administrative bodies and bodies in charge of criminal enforcement before it is adopted.
- (5) Title 4.3 of the General Administrative Law Act applies mutatis mutandis to the inspection and enforcement policy.

### Article 5.2 Inspection and enforcement implementation programme

- (1) Our Minister and the Executive Council shall specify the inspection and enforcement policy annually, as referred to in Art. 5.1(1), based on an implementation programme. This indicates the intended activities Our Minister and the Executive Council shall carry out in the coming calendar year and the corresponding capacity required for that implementation. This takes into account the set objectives and priorities

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referred to in Art. 5.1(2)(a).

(2) Art. 5.1(4) applies mutatis mutandis.

### Article 5.3 Monitoring and evaluation

(1) Our Minister and the Executive Council monitor the results and progress of:

- a. achieving the stated objectives referred to in Art. 5.1(2); and
- b. the execution of the implementation programme referred to in Art. 5.2.

(2) Our Minister and the Executive Council shall adjust the inspection and enforcement policy, referred to in Art. 5.1(1), if necessary, based on the results referred to in paragraph 1.

### Article 5.4 Reporting

The Executive Council reports annually to the Island Council and to Our Minister on:

- a. achieving the objectives and priorities set under Art. 5.1(2)(a);
- b. the implementation of the agreements referred to in Art. 5.1(4); and
- c. the activities carried out that are included in the implementation programmes referred to in Art. 5.2, and to what extent these activities have contributed to achieving the objectives set pursuant to Art. 5.1(1) and (2).

### Article 5.5 Publication

The inspection and enforcement policy, referred to in Art. 5.1(1), the implementation programme, referred to in Art. 5.2(1), and the reporting, referred to in Art. 5.4, shall be published as a whole in accordance with the Publication Act.

### Article 5.6 Further rules

In accordance with Art. 10.9(4) of the Act, further rules may be laid down by ministerial regulation on the effective enforcement of the Act, including in any case rules on:

- a. the way inspections are carried out;
- b. sanctioning; and
- c. qualifications of inspection officials.

## CHAPTER 6 TRANSITIONAL AND FINAL PROVISIONS

### Article 6.1 Transitional law

(1) A permit granted under:

- a. The BES Large Establishments Environmental Management Decree;
- b. The Bonaire Hindrance Ordinance;
- c. The Saint Eustatius Hindrance Ordinance 1993;
- d. The Hindrance Ordinance Windward Islands;
- e. shall be considered a permit as referred to in Art. 5.1(2) of the Act.

(2) In legal proceedings or lawsuits in which the Executive Council is no longer the competent authority, after Art. 6.2 takes effect, Our Minister will take the place of the Executive Council.

(3) If before this Decree takes effect an activity has been carried out continuously without an exemption or permit, within the meaning of this Decree and when this Decree takes effect, that activity becomes subject to a permit requirement as referred to in Art. 3.1, and the application for that permit shall be made to the competent authority within one month of this Decree taking effect.

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- (4) If an application for a hindrance permit under Art. 3 of the Bonaire Hindrance Ordinance or the Sint Eustatius Hindrance Ordinance 1993 was submitted before this decree takes effect, the former law shall continue to apply:
  - a. if the decree is subject to appeal: until the decree becomes final,
  - b. if the decree is not subject to appeal: until the decree takes effect.
- (5) Appeals to an administrative court or claims relating to decrees taken on the basis of the regulations referred to in paragraph 1 shall be admissible on the basis of the law that was applicable before this decree takes effect.
- (6) Archive documents and related obligations with regard to the permit referred to in paragraph 1, for which an application has already been submitted and which have not yet been granted at the time Art. 6.2 takes effect, or for which a decree to grant a permit has already been taken, shall be transferred by the Executive Council to Our Minister, to the extent that the Minister is the competent authority for such permits and they have not already been transferred to a prescribed archive repository.
- (7) A person operating a Type II establishment that was set up before this Decree takes effect and that does not have an irrevocable hindrance permit immediately prior to this Decree taking effect shall, within 12 months of this Decree taking effect, report to the competent authority that they operate the establishment.
- (8) If, at the time this Decree takes effect in respect of an establishment as referred to in sub-section 7, no decision has yet been made on an application for a hindrance permit, sub-section 7 shall not apply and the application for the hindrance permit shall be regarded as a notification in accordance with Art. 2.2.

### **Article 6.2 Repeal of BES Large Establishments Environmental Management Decree**

- (1) The BES Large Establishments Environmental Management Decree shall be repealed.
- (2) After this decree takes effect, the BES Regulation on the designation of BAT documents for environmental management of large-scale establishments shall be based on Art. 3.4(3) of this decree.

### **Article 6.3 Date of effectiveness**

This decree shall take effect at a time to be determined by royal decree, which may be set differently for the different Public Entities, articles and categories of establishments of this decree.

### **Article 6.4 Reference title**

This decree shall be cited as: Establishments and Activities Decree BES.

Order and command that this decree and the accompanying explanatory memorandum shall be published in the Official Gazette.

The Hague, 20 December 2023

Willem-Alexander

Secretary of State for Infrastructure and Water Management,  
V.L.W.A. Heijnen

Published on the *twenty-second* of December 2023

Justice and Security Minister,

D. Yeşilgöz-Zegerius

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## Annex 1.

### List of categories of establishments belonging to Art. 1.2(1) of this Decree

## CHAPTER 1. GENERAL PROVISIONS

### Article 1.1 Definitions

For the purposes of this annex, the following definitions shall apply:

*trailer*: vehicle obviously intended to be propelled by a motor vehicle or another vehicle, as well as semi-trailers;

*ADR*: the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), concluded in Geneva on 30 September 1957 (Trb. 1959, 171);

*waste oil*: any type of mineral or synthetic lubricating or industrial oil which has become unfit for the use for which it was originally intended, which in any case includes used oils from internal combustion engines and gearboxes, as well as lubricating oils, oils for turbines and hydraulic oils;

*scrap vehicle*: motor vehicle that constitutes waste material within the meaning of Art. 1.2(1) of the Act;

*commercial waste*: waste, excluding hazardous waste and household waste not yet collected or delivered;

*above-ground storage tank*: storage tank that is not an underground storage tank;

*moped*: motor vehicle with two, three or four wheels, other than a disabled vehicle or a trailer;

*category 1*: fireworks that present a very low hazard and negligible noise level and are intended for use in confined spaces, including fireworks intended for use indoors;

*category 2*: low-hazard, low-noise fireworks intended for outdoor use in a defined location;

*category 3*: fireworks which present a medium hazard and are intended for outdoor use in a large open area, and whose noise level is not harmful to human health;

*category 4*: high-hazard fireworks intended to be used only by persons with specialised knowledge and whose noise level is not harmful to human health;

*consumer fireworks*: fireworks intended for use by private individuals classified in categories 1, 2 and 3 and listed in Art. 1.2 of this Annex; thudding fireworks listed in Art. 1.2 of this Annex with ADR class 1.4g or with ADR class 1.4s;

*hazardous substances*: substances and objects the carriage of which is prohibited by ADR or authorised only under the conditions set out therein, or substances, materials and objects listed in IMDG Code International Maritime Dangerous Goods Code (MSC.406(96));

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*marina*: establishment for providing opportunities for mooring vessels;

*farmed animals*: animals kept for production;

*motor vehicle*: all vehicles intended to be propelled other than along rails solely or partly by mechanical power present on or attached to the vehicle itself or by electric traction with power supplied from elsewhere, excluding pedal cycles;

*underground storage tank*: storage tank located entirely in the ground or in a mound;

*professional fireworks*: fireworks classified in category 4 and fireworks that do not meet the composition requirements in Art. 1.2 of this Annex;

*combustion plant*: technical unit in which fuels are oxidised to use the heat thus generated;

*vessels*: ship intended or used for maritime navigation, sports or leisure activities

*packaging group*: group in which a substance is classified according to the ADR;

*fireworks*: item of entertainment containing an explosive substance or mixture and designed to produce heat, light, sound, gas or smoke by self-sustained exothermic chemical reactions.

## Article 1.2 Overview of name, effect, category classification and composition requirements of consumer fireworks

Dutch name	English name	Effect	category	maximum permitted weight of pyrotechnic substances or preparations
Knalvuurwerk	bangers	Bang	2	2.5 gram black powder
Firecrackers	flashbangers	Bang	3	up to 2 grams of perchlorate/metal explosive charge
Knalstrengen	banger batteries	repeating bangs	2	100 gram black powder in total; per compartment max. 0.5 grams black powder
			3	1,000 gram black gunpowder in total; per compartment max 0.5 grams black powder or flashbangers with max. 250 grams perchlorate/metal mixture explosive charge with max. 1 gram per compartment
Batterij enkelschotsbuizen	shot tube batteries	effects as with single-shot tubes	2	500 grams pyrotechnical substances or preparations in total; per compartment max. 15 grams pyrotechnical substances or preparations; per compartment as burst charge or max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
Batterij enkelschots-buizen	shot tube	effects as with single-shot tubes	3	1,000 grams pyrotechnical substances or preparations in total; per compartment max. 15 grams pyrotechnical substances or preparations; per compartment as burst charge or max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
Batterij fontein en of mijnen of Romeinse kaarsen	batteries	Effects of multiple fountains or mines or Roman candles	2	200 grams pyrotechnical substances or preparations; only batteries permitted of fountains or mines or Roman candles, each type functioning separately and meeting the individual requirements of the components listed in this table
Combinaties van fontein en, mijnen, Romeinse kaarsen en enkelschots-buizen	combinations	Combined effects of fountains mines, Roman candles and single-shot tubes	2	500 grams pyrotechnical substances or preparations; only combinations permitted for fountains, mines, Roman candles and single-shot tubes, with each type functioning separately and meeting the individual requirements for the components listed in this table
Flitstabeltten	flash pellets	multiple light flashes	2	30 grams pyrotechnical substances or preparations
Fontein en	fountains	emission of sparks flames with	2	100 grams pyrotechnical substances or preparations; explosive charge is not permitted

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Dutch name	English name	Effect	category	maximum permitted weight of pyrotechnic substances or preparations
		sound effect other than a bang or without sound effect		
Grondmobielen	ground movers	movement over the ground with emissions of sparks or  flames with sound effect other than a bang or without sound effect	2	25 grams pyrotechnical substances or preparations; each pyrotechnical unit containing max. 3 grams of pyrotechnical substances or preparations; explosive charge is not permitted
Grondtollen	ground spinners	rotating movement over the ground with emission of sparks  flames with sound effect other than a bang or	2	15 grams pyrotechnical substances or preparations; each pyrotechnical unit containing max. 8 grams of pyrotechnical substances or preparations; explosive charge is not permitted without sound effect
Springtollen	jumping ground spinners	rotating movement over the ground, frequently interrupted by a leaping motion, with emission of sparks flames with sound effect other than a bang or without sound effect	2	5 grams pyrotechnical substances or preparations; explosive charge is not permitted
Mijnen	mines	one-off emission of the entire contents	2	50 grams pyrotechnical substances or preparations; not more than 5 pyrotechnical units with burst charge with each or max. 5 grams black powder, or max. 2 grams nitrate/metal or max. 1 gram perchlorate/metal; explosive charge is not permitted; if also non-pyrotechnical objects are present, amounts to the max. permissible weight of the propelled charge 8 grams nitrocellulose with a mass fraction nitrate of max. 12.6%
Minivuurpijlen	mini rockets	ascending with or without light or  sound effect, possibly followed by a sound effect in the Air	2	1.5 grams pyrotechnical substances or preparations; explosive charge of more than 0.13 grams is not permitted
Vuurpijlen	rockets	ascending with or without light or sound effect, possibly followed by a light or sound effect in the air	2	75 grams pyrotechnical substances or preparations in total; the burst charge contains max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
Romeinse kaarsen	Roman candles	successive emission of pyrotechnical units, with a series  light or sound effect in the air occurs	2	two or more pyrotechnical units up to a joint weight of pyrotechnical substances or preparations of  no more than 50 grams, where the weight pyrotechnical substances or preparations per pyrotechnical unit contains no more than 10 grams; not more than 5 pyrotechnical units with burst charge, each with or max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
Enkelschots-buizen	shot tubes	emission of the pyrotechnical unit, where a light or sound effect in the air occurs	2	25 grams pyrotechnical substances or preparations in total: the burst charge of the pyrotechnical unit contains max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
			3	40 grams pyrotechnical substances or preparations in total: the burst charge of the pyrotechnical unit contains max. 10 grams black powder or max. 4 grams nitrate/metal or max. 2 grams perchlorate/metal; explosive charge is not permitted
Stijgtollen	spinners	combined rotating and	2	5 grams black powder; explosive charge is not permitted

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Dutch name	English name	Effect	category	maximum permitted weight of pyrotechnic substances or preparations
		rising movement, with emission of sparks or flames with sound effect other than a bang or without sound effect		
Draaizonnen	wheels	rotating movement around a fixed point, with emission of sparks or flames with sound effect other than a bang or without sound effect	2	40 grams pyrotechnical substances or preparations; the weight of pyrotechnical substances of any effect charge with whistling effect per compartment is not more than 5 grams; explosive charge is not permitted
Bengaals vuur	Bengal flames	emission of coloured flames	1	20 grams pyrotechnical substances or preparations
Bengaalse lucifers	Bengal matches	emission of coloured flames and sparks	1	3.0 grams pyrotechnical substances or preparations
Bengaalse fakkels	Bengal sticks	emission of coloured flames and sparks	1 2	7.5 grams pyrotechnical substances or preparations 25 grams pyrotechnical substances or preparations
Kerstcrackers	Christmas crackers	bang as a result of tearing apart of the item and emission of non-pyrotechnical objects	1	16 milligrams pyrotechnical substances or preparations based on potassium chlorate and red phosphorous or 1.6 milligrams silver fulminate
Knetter pellets Flitstabletten	crackling granules flash pellets	crackling sound multiple light flashes	1 1	3.0 grams pyrotechnical substances or preparations 2.0 grams pyrotechnical substances or preparations
Fonteinen voor gebruik binnenshuis	fountains for indoor use	emission of sparks flames with sound effect other than a bang or without sound effect	1	7.5 grams pyrotechnical substances or preparations based on nitrocellulose, with mass fraction nitrate of max. 12.6%, without additional oxidising substances
Fonteinen voor gebruik buitenshuis	fountains for outdoor use	emission of sparks flames with sound effect other than a bang or without sound effect	1	7.5 grams pyrotechnical substances or preparations
Grondtollen	Ground spinners	rotating movement over the ground with emission of sparks flames with sound effect other than a bang or without sound effect	1	5.0 grams pyrotechnical substances or preparations
Schertslucifers	novelty matches	bang or light effect	1	50 milligrams, 1 explosive charge of max. 2.5 milligrams silver fulminate permitted
Confettibommen	party poppers	bang and emission of non-pyrotechnical objects	1	16 milligrams pyrotechnical substances or preparations based on potassium chlorate and red phosphorous
Slangen	serpents	expanding solid combustion residues in a predetermined shape	1	3.0 grams pyrotechnical substances or preparations
Trektouwtjes	snaps	bang as a result of tearing apart of the item	1	16 milligrams pyrotechnical substances or preparations based on potassium chlorate and red phosphorous or 1.6 milligrams silver fulminate
Sterretjes	sparklers	emission of sparks with sound effect other than a bang or without sound effect	1 2	7.5 grams pyrotechnical substances or preparations 30 grams pyrotechnical substances or preparations
Tafelbommen, knalbonbons of cotillonvruchten	table bombs	bang and emission of non-pyrotechnical objects	1	2.0 grams pyrotechnical substances or preparations based on nitrocellulose, with a ash fraction nitrate of max. 12.6%
Knalerwten	throwdowns	bang as a result of throwing the item on the ground	1	2.5 milligrams silver fulminate



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## CHAPTER 2 CATEGORIES OF ESTABLISHMENTS

### Article 2.1 Scope

- (1) A Type I establishment is an establishment that is not a Type II, III or IV establishment.
- (2) A Type II establishment is an establishment that is not a Type I, III or IV establishment.
- (3) A Type III establishment is an establishment that is not a Type I, II or IV establishment.

### Article 2.2 Designation of categories of establishments

Categories 1 to 22 designate the categories of establishments referred to in Art. 5.1(1) and (2) of the Act.

#### Category 1 Apparatus, installations and motors Component

Part 1.1 An establishment where:

- a. one or more electric motors are present with a capacity or
- b. combined capacity greater than 1.5 kW, provided that an electric motor with a capacity of 0.25 kW or less is excluded from the calculation of the combined capacity;
- c. one or more internal combustion engines are present with a capacity or combined capacity greater than 1.5 kW, provided that an internal combustion engine with a capacity of 0.25 kW or less is excluded from the calculation of the combined capacity;
- d. one or more facilities or installations are present for the combustion of fuels with a thermal capacity or combined capacity greater than 130 kW.

Part 1.2 Part 1.1 does not apply to:

- a. electric motors, internal combustion engines and fuel combustion plants temporarily present in a given environment;
- b. electric motors, used in a building or part of a building used or intended for residential purposes, for the benefit of that building.

Part 1.3 A Type II establishment is an establishment where:

- a. one or more electric motors are present with a capacity or combined capacity greater than 20 kW;
- b. one or more facilities or installations for the combustion of fuels with a thermal capacity or combined capacity greater than 20 kW and less than 1 MWth.

Part 1.4 A Type III establishment is an establishment where:

1. one or more combustion plants with a rated capacity greater than 20 kW are present, fired by a substance other than:
  - a. propane gas;
  - b. butane gas, or
  - c. liquid fuels, including biodiesel, complying with NEN-EN 14214.
2. one or more facilities or installations for the combustion of fuels with a thermal capacity or combined capacity exceeding 1 MWth.

#### Category 2 Gases

Part 2.1 An establishment for the handling, processing, storage and transshipment of gases or gas mixtures, whether or not compressed to liquid or dissolved in liquid under pressure.

Part 2.2 A Type II establishment is an establishment for:

- a. filling gas cylinders with propane or butane with a capacity of less than 12 litres



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- from a gas cylinder of not more than 150 litres;
- b. filling gas cylinders with asphyxiant gases;
- c. filling gas cylinders with a capacity not exceeding 2 litres with oxygen from a concentrator;
- d. filling gas cylinders of a capacity not exceeding 3 litres at a pressure not exceeding 1.6 bar with deeply refrigerated liquid oxygen from a gas cylinder of a capacity not exceeding 60 litres at a pressure not exceeding 1.6 bar;
- e. filling gas cylinders with breathing air for divers with a capacity of up to 15 litres;
- f. the storage of propane, propylene, oxygen, digester gas, carbon dioxide, air, argon, helium or nitrogen in one or more storage tanks.

Part 2.3 A Type III establishment is an establishment for:

- a. manufacturing gases;
- b. storage of more than 1,500 litres of ammonia in gas cylinders;
- c. storage of more than 1,500 litres of ethylene oxide in gas cylinders;
- d. storage of more than 250 litres of hazardous substances or CMR substances in gas cylinders;
- e. storage of propane or propylene in more than two storage tanks;
- f. storage of propane or propylene where, except for emptying for transportation of the storage tank, the gas is not withdrawn from a storage tank exclusively in the gas phase;
- g. storage of gases other than propane, propylene, oxygen, digester gas, carbon dioxide, air, argon, helium or nitrogen in one or more storage tanks;
- h. storage of gases other than propane in underground storage tanks;
- i. storage of gases in a gas bag;
- j. storage of gases other than in gas cylinders, gas cartridges, aerosols, gas bags or storage tanks made of metal or plastic;
- k. delivery of LPG;
- l. filling gas cylinders of ADR class 2, with the exception of Part 2.2 a to f;
- m. filling of aerosols, excluding non-automated filling with substances other than propellants;
- n. where heat pumps, or cooler or freezer systems are present, with a capacity per system exceeding 1,500 kilograms of ammonia or 100 kilograms of propane, butane or a mixture of propane and butane;
- o. for fumigation or degassing of containers.

Part 2.4 A Type IV establishment is an establishment for storing gases with a storage capacity of more than 10 tonnes.

### Category 3 Explosive substances

Part 3.1 In this category, explosive substances means the substances or preparations referred to in Art. 2 of the Decree on Packaging and Labelling of Environmentally Hazardous Substances and Preparations, or the substances, preparations or other products, which are classified in the international transport hazard class 1 as referred to in Annex 1 of the Ordinance on the Carriage of Dangerous Goods by Road (ADR), as well as nitrocellulose.

Part 3.2 An establishment where explosive substances, preparations or products are packaged or repackaged, stored or transhipped.

Part 3.3 For the purposes of Part 3.1 of this Annex, the storage of not more than the following quantities shall be excluded:

- 1°. 10,000 cartridges or parts thereof belonging to hazard group 1.4 of the ADR for firearms of calibre not exceeding 13.2 mm or for shooting tools;
- 2°. 1 kg of black powder belonging to hazard group 1.1 of the ADR;
- 3°. 3 kg of smokeless black powder belonging to hazard group 1.3 of the

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ADR;

4°. 10 kg pyrotechnic toys belonging to hazard group 1.4 of the ADR;

5°. 25 kg of consumer fireworks belonging to hazard group 1.4 of the ADR.

Part 3.4 For the purposes of Part 3.2, the handling, processing, packaging or repackaging, storage and transshipment of explosive substances within establishments used by Dutch or allied armed forces shall not be considered.

Part 3.5 A Type II establishment is an establishment where consumer fireworks with a combined storage capacity of up to 1,100 kilograms are stored.

Part 3.6 A Type III establishment is an establishment where:

- a. consumer fireworks are packaged or repackaged, stored or transhipped, with a combined storage capacity exceeding 1,100 kilograms;
- b. professional fireworks are packaged or repackaged, stored or transhipped;
- c. more than 1 kilogram of black powder is stored;
- d. more than 50 kilograms of smokeless powder is stored;
- e. more than 50 kilograms net explosive mass emergency signal is stored;
- f. more than 250,000 cartridges for the purpose of stud guns are stored;
- g. storage of explosive substances other than those listed above and other than pyrotechnic toys.

Part 3.7 A Type IV establishment is, in any case, an establishment for the manufacture and processing of explosive substances.

#### **Category 4 Hazardous substances, fuels and flammable liquids**

Part 4.1 An establishment for:

- a. handling, processing, delivery, storage and transshipment of the following hazardous substances, preparations or other products from:
  - 1°. category oxidizing;
  - 2°. category extremely flammable;
  - 3°. category highly flammable;
  - 4°. category flammable;
  - 5°. category combustible;
  - 6°. category highly toxic;
  - 7°. category poisonous;
  - 8°. category harmful;
  - 9°. category corrosive;
  - 10°. category irritant;
  - 11°. category sensitising;
  - 12°. category carcinogenic;
  - 13°. category mutagenic;
  - 14°. category reprotoxic;
  - 15°. category environmentally hazardous.
- b. products incorporating substances or preparations referred to in point a;
- c. cosmetic or pharmaceutical products.

Part 4.2 For the purposes of Part 4.1 of this Annex, pharmacies and practices for the practice of medicine as general practitioners and veterinary medicine are excluded.

Part 4.3 A Type II establishment is an establishment for:

- a. storage of liquid fuels, waste oils or substances of Class 5.1 or Class 8, Packing Groups II and III, referred to in Annex A to the ADR with a combined

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- capacity not exceeding 150 m<sup>3</sup>;
- b. delivery of liquid fuels.

Part 4.4 A Type III establishment is an establishment:

- a. for the storage of hazardous substances in tanks other than liquid fuels or waste oils in underground storage tanks;
- b. for the storage of hazardous substances other than those listed in Part 4.3 of this Annex;
- c. for the storage of more than 10,000 kilograms of hazardous substances in packaging as referred to in Part 4.1 of this Annex;
- d. where there is a practice area or laboratory, where targeted work with biological agents is carried out;
- e. storing liquid fuels or waste oils in storage tanks with a capacity of more than 150 m<sup>3</sup>;
- f. storage of substances of Class 5.1 or Class 8, packing groups II and III, referred to in Annex A to the European Agreement concerning the International Carriage of Dangerous Goods by Road concluded at Geneva on 30 September 1957 (Trb. 1959, 171) in tanks having a combined capacity exceeding 150 m<sup>3</sup>.

Part 4.5. A Type IV establishment is an establishment for:

- a. the manufacture of substances listed in Part 4.1 of this Annex;
- b. the storage and transfer of petroleum, petroleum products or hydrocarbons in liquid state with a storage capacity of these substances or products of 2,500 tonnes or more;
- c. the storage and transshipment of petroleum, petroleum products or hydrocarbons in liquid state with a storage capacity for these substances or products of 25,000 tonnes or more, as referred to in Art. 8.6(1) of the Act;
- d. refining petroleum or petroleum fractions, cracking or gasification.

### **Category 5 Animals, agriculture and animal husbandry**

Part 5.1 An establishment for:

- a. rearing, breeding, fattening, keeping, trading, loading or weighing of animals;
- b. storage and transshipment of hides, furs, leather or leather semi-finished products;
- c. the manufacture, treatment or processing of hides, furs, leather or leather semi-finished products;
- d. handling, processing, storage and transshipment of products, released during the slaughter of animals;
- e. slaughter of animals.

Part 5.2 A Type I establishment is an establishment for breeding or keeping up to 100 birds or up to 25 mammals.

Part 5.3 A Type II establishment is an establishment for:

- a. breeding or keeping 100 to 200 birds or 25 to 50 mammals;
- b. keeping for production up to and including 300 poultry;
- c. keeping up to and including 100 farm animals in total;
- d. storage and transshipment of hides, furs, leather or leather semi-finished products;
- e. the manufacture, treatment or processing of hides, furs, leather or leather semi-finished products;
- f. handling, processing, storage and transshipment of products, released during the slaughter of animals.

Part 5.4 A Type III establishment is an establishment for:

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- a. Breeding or keeping more than 200 birds or more than 50 mammals;
- b. keeping for production more than 300 poultry;
- c. keeping more than 100 farm animals in total;
- d. breeding aquatic animals in one or more tanks with a combined capacity of 10,000 litres or more;
- e. farming consumer fish;
- f. the industrial manufacture, treatment or processing of hides, furs, leather or leather semi-finished products;
- g. slaughter of animals.

### Category 6 Foodstuffs

Part 6.1 An establishment for:

- a. manufacturing, processing, handling and storage of meat or meat products;
- b. handling, processing, storage and transshipment of fish, molluscs, crustaceans or products released during their handling or processing;
- c. manufacturing bread, pastry, chocolate products, rusks, cakes or biscuits;
- d. manufacturing, processing or transforming food, beverages or raw materials for that purpose;
- e. manufacturing, processing, handling, storage and transshipment of food for animals or raw materials for that purpose;
- f. growing, handling, trading, storage and transshipment of agricultural products.

Part 6.2 For the purposes of Part 6.1(e) of this Annex, establishments storing hay, straw or flax pressed or bundled into bales with a dry matter content of more than 30% shall not be considered.

Part 6.3 A Type I establishment is an establishment for the manufacture of food for persons living or working in the accommodation of the establishment.

Part 6.4 A Type II establishment is an establishment for:

- a. manufacturing, processing, handling and storage of meat or meat products;
- b. handling, processing, storage and transshipment of fish, molluscs, crustaceans or products released during their handling or processing;
- c. manufacturing bread, pastry, chocolate products, rusks, cakes or biscuits;
- d. manufacturing, processing or transforming food, beverages or raw materials for that purpose;
- e. manufacturing, processing, handling, storage and transshipment of food for animals or raw materials for that purpose;
- f. growing, handling, trading, storage and transshipment of agricultural products.

Part 6.5 A Type III establishment is an establishment for:

- a. manufacturing, treating or processing food, beverages or raw materials for that purpose where the combined rated load at the upper value of continuous ovens exceeds 400 kW;
- b. growing algae.

### Category 7 Pesticides

Part 7.1 An establishment where pesticides as referred to in Art. 1 of the BES Pesticides Regulations Act are processed, stored or transhipped.

Part 7.2 A Type II establishment is an establishment where more than 10 kilograms of pesticides are processed, stored or transferred.

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Part 7.3 A Type III establishment is an establishment for the manufacture of pesticides.

### Category 8 Building materials

Part 8.1 An establishment for the extraction, manufacture, treatment, processing, storage and transfer of:

- a. ceramics, bricks, ornamental or paving stones, roof tiles, porcelain, pottery, limestone, cement, cement mortar, cement wares or lime;
- b. concrete mortar or concrete products;
- c. ores, minerals, derivatives of ores or minerals, mineral products or marl;
- d. asbestos or products containing asbestos;
- e. glass or glass objects;
- f. asphalt or asphalt-containing products;
- g. stone, rock (diabase) or stone objects other than rubble;
- h. sand or gravel;
- i. and soil.

Part 8.2 For the purposes of Part 8.1(a) and (e) of this Annex, establishments having one or more furnaces with a thermal capacity or combined thermal capacity of 5 kW or less, intended for the manufacture or processing of the said products, shall not be considered.

Part 8.3 A Type II establishment is an establishment for the manufacture, treatment, processing, storage and transfer of:

- a. ceramics, bricks, ornamental or paving stones, roof tiles, porcelain, pottery, limestone, cement, cement mortar, cement wares or lime;
- b. concrete mortar or concrete products;
- c. ores, minerals, derivatives of ores or minerals, mineral products or marl;
- d. glass or glass objects;
- e. stone, rock (diabase) or stone objects other than rubble;
- f. sand or gravel;
- g. and soil.

Part 8.4 A Type III establishment is an establishment for:

- a. manufacturing or processing with equipment with an individual nominal load at the upper value exceeding 130 kW or a connected load exceeding 130 kW of ceramic products, bricks, ornamental or paving stones, roof tiles, porcelain or earthenware;
- b. manufacturing or processing with equipment having an individual nominal load at the upper value exceeding 130 kW or a connected value exceeding 130 kW of glass or glass objects;
- c. extracting stone or stony materials;
- d. extracting, crushing, grinding, screening or drying sand, gravel, lime or other minerals or their derivatives;
- e. manufacturing, treating or processing asphalt or asphalt-based products.

### Category 9 Metals

Part 9.1 An establishment for the manufacture, treatment, processing, storage and transfer of metals, metal articles or scrap metal, or for surface treatment of metals or metal objects.

Part 9.2 A Type II establishment is an establishment for the treatment,

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processing, storage and transshipment of metals, metal objects or scrap metal or for surface treatment of metals or metal objects.

Part 9.3 A Type III establishment is an establishment for:

- a. manufacturing pig iron, crude steel or primary non-ferrous metals;
- b. casting metals or their alloys;
- c. hardening or annealing metals or diffusing substances in the metal surface, if salts, oils or gases other than inert gases or carbon dioxide are applied;
- d. treating metal surfaces by clean burn-off and pyrolysis;
- e. applying metal coatings with cyanide-containing baths, with a total bath volume of more than 100 litres.

### Category 10 Transport

Part 10.1 An establishment for:

- a. manufacturing, maintaining, repairing, surface treating, inspecting, cleaning, trading, renting or trialling of:
  - 1°. Aircraft;
  - 2°. Motorbikes, motor vehicles or vessels;
  - 3°. Caravans;
  - 4°. Agricultural equipment;
  - 5°. Mopeds;
- b. parking of three or more motor vehicles, articulated motor vehicles, trailers or semi-trailers intended for the carriage of goods by road, the mass of the unladen vehicle plus the load capacity of which exceeds 3,500 kilograms.

Part 10.2 For the purposes of Part 10.1(b) of this Annex, parking areas that form part of public roads or road sections and parking areas open to public traffic shall be excluded.

Part 10.3 A Type I establishment is an establishment:

- a. where sensitive objects are present within a distance of 50 metres from the boundary of the establishment and, in the period between 19.00 and 07.00 hours, an average of four or fewer transport movements take place with motor vehicles whose unladen vehicle mass plus payload exceeds 3,500 kilograms;
- b. where there is no outdoor training area for motor vehicles;
- c. for providing parking in a car park for up to 30 passenger vehicles;
- d. for operating a battery charger.

Part 10.4 A Type II establishment is an establishment for:

- a. maintaining, repairing, surface treating, inspecting, cleaning, trading, renting or trialling of:
  - 1°. Motorbikes, motor vehicles or mopeds;
  - 2°. Agricultural equipment;
  - 3°. Vessels with a length measured along the waterline not exceeding 10 metres.
- b. parking of three or more motor vehicles, articulated motor vehicles, trailers or semi-trailers intended for the carriage of goods by road, the mass of the unladen vehicle plus the load capacity of which exceeds 3,500 kilograms.

Part 10.5 A Type III establishment is an establishment for:

- a. manufacturing, repairing, trialling or external cleaning of aircraft;
- b. construction or conversion of metal vessels;
- c. manufacturing, maintaining, repairing or surface treating vessels over 10 metres;
- d. mooring sea-going ferries, container ships and cruise ships;

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e. transferring from ship to ship;

f. tanker cleaning;

g. parking of transport units carrying dangerous goods for more than 24 hours;

h. parking of more than three transport units carrying dangerous goods.

### Category 11 Wood and cork

Part 11.1 An establishment for the manufacture, treatment, processing, handling, storage and transshipment of wood or cork or woody, corky or wood-like objects.

Part 11.2 A Type II establishment is an establishment for the manufacture, treatment, processing, handling, storage and transshipment of wood or cork, or of woody, corky or wood-like objects.

Part 11.3 A Type III establishment is an establishment for impregnating wood by injection, spraying or applying the vacuum-pressure method.

### Category 12 Textile, paper and graphic technology

Part 12.1 An establishment for:

- a. treating, processing, storing, transferring or cleaning of textiles,
- b. home textiles, textile raw materials or textile products;
- c. handling, processing, storage and transshipment of paper pulp, paper or paper products;
- d. applying graphic technologies.

Part 12.2 For the purposes of Part 12.1 of this Annex, establishments storing bundled flax with a dry matter content of more than 30% shall be excluded.

Part 12.3 A Type II establishment is an establishment for:

- a. treating, processing, storing, transferring or cleaning of textiles, home textiles, textile raw materials or textile products;
- b. handling, processing, storage and transshipment of paper pulp, paper or paper products;
- c. applying graphic technologies.

Part 12.4 A Type III establishment is an establishment for:

- a. manufacturing textiles and home textiles;
- b. manufacturing paper or paper products.

### Category 13 Waste water

Part 13.1 An establishment for:

- a. storing, treating or cleaning waste water.
- b. an establishment for the discharge of:
  - 1°. waste water or other liquids on or in the soil;
  - 2°. waste water or other waste into a public storm-water system;
  - 3°. waste water or other waste into a public sewer;
  - 4°. waste water or other waste in another plant for the collection and transport of waste water.

Part 13.2 A Type I establishment is an establishment for:

- a. discharge of domestic waste water;
- b. the discharge of run-off rainwater that does not originate from a soil protection plant.

Part 13.3 A Type III establishment is an establishment for storing, treating and purifying waste water with a capacity of more than 500 population



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equivalents per year.

### Category 14 Weapons

Part 14.1 An establishment where firearms are fired or flammable or explosive objects are thrown.

Part 14.2 Part 14.1 of this Annex does not apply to establishments where Dutch or allied armed forces shoot exclusively with blank cartridges.

Part 14.3 A Type III establishment is an establishment where firearms are fired or flammable or explosive objects are thrown.

### Category 15 Hospitality

Part 15.1 An establishment for the purpose of hotels, restaurants, boarding houses, cafés, cafeterias, snack bars and discotheques, as well as adjoining establishments where lodging is provided, drinks are served or food for immediate consumption is prepared or provided for remuneration.

Part 15.2 A Type I establishment is an establishment where:

- a. partly based on the nature of the establishment, it is unlikely that the equivalent indoor sound level (Leq) caused by the music played in any room of the establishment in the representative operating situation will exceed:
  - 1°. 70 dB(A), if this room is located in or adjacent to a sensitive building;
  - 2°. 80 dB(A), if Part 1° does not apply;
- b. no music is played outdoors or on an open area of the establishment.

Part 15.3 A Type II establishment are establishments used for hotels, restaurants, guest houses, cafés, cafeterias, snack bars and discotheques, as well as related establishments where accommodation is provided, drinks are served or food for immediate consumption is prepared or provided for a fee.

Part 15.4 A Type III establishment is an establishment where:

- a. the construction or operation of a golf course and other recreational or tourism facilities with an area of 8 hectares or more;
- b. the construction or operation of sites and structures for accommodation for 10 rooms or more in sensitive areas and a buffer-zone sensitive area.

### Category 16 Sport and recreation

Part 16.1 An establishment where:

- a. three or more gaming machines are present that are set up for use by persons other than the owner or holder;
- b. one or more facilities are present for dancing, as well as dance schools;
- c. one or more facilities or amenities are present for the practice of sports, as well as gyms and sports halls;
- d. one or more facilities are present for the practice of music, as well as music schools and music practice rooms;
- e. one or more facilities are present for recreational purposes and where a sound system is installed, as well as sports grounds and open-air theatres;
- f. opportunity to swim;
- g. opportunity to use:
  - 1°. Motorised model aircraft, vessels or vehicles;
  - 2°. Mopeds, motor vehicles or other motorised vehicles or vessels in competition, in preparation for competitions or for recreational purposes;
- h. ten or more berths for vessels are present in a marina;
- i. with bows or bowed weapons or with weapons operated using air or gas



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pressure.

Part 16.2 A Type II establishment is an establishment where:

- a. one or more facilities or amenities are present for the practice of sports, as well as gyms and sports halls;
- b. one or more facilities are present for the practice of music, as well as music schools and music practice rooms;
- c. one or more facilities are present for recreational purposes and where a sound system is installed, as well as sports grounds and open-air theatres;
- d. opportunity to swim;
- e. opportunity to use:
  - 1°. motorised model aircraft, vessels or vehicles;
  - 2°. mopeds, motor vehicles or other motorised vehicles or vessels in competition, in preparation for competitions or for recreational purposes;
- f. ten or more berths for vessels are present in a marina;
- g. with bows or bowed weapons or with weapons operated using air or gas pressure.

Part 16.3 A Type III establishment is:

- a. an establishment providing opportunities for the use of mopeds, motor vehicles or other motorised vehicles or vessels in competition, in preparation for competitions or for recreational purposes, in the case of land, not being public roads, intended or arranged for the use of motorised vehicles in competition, in preparation for competitions or for recreational purposes, and open for eight hours a week or more for that purpose;
- b. an establishment for:
  - 1°. using mopeds, motor vehicles or other motorised vehicles or vessels in competition or for outdoor recreational purposes;
  - 2°. giving outdoor musical performances where more than 5,000 visitors may be present at the same time;
  - 3°. shooting in the open air with weapons operated using air pressure or gas pressure.

### Category 17 Drinking water treatment

Part 17.1 A drinking water treatment plant.

Part 17.2 A Type III establishment is an establishment for:

- a. desalination of seawater for drinking water preparation;
- b. infiltration and abstraction of water for drinking water preparation;
- c. desalination of seawater for purposes other than those mentioned in Part (a) of this Part.

### Category 18 Energy conversion

Part 18.1 An establishment for

- a. converting:
  - 1°. wind energy into mechanical, electrical or thermal energy;
  - 2°. hydrostatic energy into electrical or thermal energy;
  - 3°. electrical energy into radiant energy;
  - 4°. thermal energy into electrical energy;
- a. transformer substations, with transformers not housed in an enclosed building, with a maximum simultaneously switchable electrical capacity of 200 MVA or more.

Part 18.2 A Type I establishment is an establishment for:

- a. having an emergency power generator present and operating for no more than 50 hours per year;
- b. the operation of combustion plants with a rated thermal input capacity of up to

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1 MWth for the heating of buildings or the heating of domestic hot water.

Part 18.3 A Type II establishment is an establishment:

- a. for converting wind energy into mechanical, electrical or thermal energy with wind turbines with a rotor diameter greater than 2 m;
- b. for converting thermal energy into electrical energy with a capacity or combined capacity exceeding 1.5 kW;
- c. that may be designated as a transformer substation, with transformers not housed in enclosed buildings, with a maximum simultaneously switchable electrical capacity of 200 MVA or more.

Part 18.4 A Type III establishment is an establishment for converting:

- a. hydrostatic energy into electrical or thermal energy;
- b. electrical energy into radiant energy with a capacity or combined capacity for conversion exceeding 4 kW;
- c. wind power in mechanical, electrical or thermal energy with more than 5 wind turbines with a rotor diameter larger than 2 metres or a combined capacity of 5 megawatts.

#### Category 19 Storage of other goods

Part 19.1 An establishment for the storage and transshipment of general cargo or bulk goods, other than those substances, preparations or products listed in any other part of this Annex, with an area for their storage of 2,000 m<sup>2</sup> or more.

Part 19.2 A Type I establishment is an establishment for the storage and transfer of inert goods that are not susceptible to dust creation.

Part 19.3 A Type II establishment is an establishment for the storage, transshipment or transfer of general cargo or bulk goods, other than those substances, preparations or products listed in another category in this Annex, with a storage area for them of 2,000 m<sup>2</sup> or more.

#### Category 20 Hospitals

Part 20.1 Establishments being:

- a. general, academic or specialist hospitals;
- b. establishments providing medical treatment, nursing or accommodation together with care.

Part 20.2 For the purposes of Part 20.1, of this Annex, practices for the practice of medicine as a general practitioner and veterinary medicine are excluded.

Part 20.3 A Type II establishment are establishments for providing medical treatment, nursing or accommodation together with care.

Part 20.4 A Type III establishment is a general, academic or specialist hospital.

#### Category 21 Waste

Part 21.1 An establishment for:

- a. storing:
  - 1°. household waste;
  - 2°. commercial waste;
  - 3°. scrap cars and other scrap vehicles;
  - 4°. hazardous waste;
  - 5°. waste from human and animal health care and from outside the

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establishment:

- b. infectious wastes,
- c. body parts and organs, and
- d. wastes from cytotoxic and cytostatic drugs;
- e. processing, destruction or transshipment of waste;
- f. dumping of waste;
- g. the deposit of waste on or into the soil in any other way;
- h. recovery or disposal of waste.

Part 21.2 A Type I establishment is an establishment that does not carry out activities involving waste from outside the establishment.

Part 21.3 A Type II establishment is an establishment for:

- a. The storage of industrial waste with a capacity of up to 5 m<sup>3</sup>, not including the separate storage of paper, aluminium, cardboard and glass;
- b. Storing up to 4 scrap vehicles;
- c. the recovery or disposal of waste.

Part 21.4 A Type III establishment is an establishment for:

- a. processing, destruction or transshipment of waste;
- b. dumping of waste;
- c. the deposit of waste on or into the soil in any other way;
- d. the storage and transfer of the following wastes:
  - 1°. household waste collected or delivered from outside the establishment;
  - 2°. industrial waste collected or delivered from outside the establishment;
  - 3°. contaminated soil from outside the establishment;
  - 4°. hazardous waste from outside the establishment;
- e. processing or destruction – other than incineration – of hazardous waste generated outside the establishment;
- f. processing or destroying scrap vehicles or storing more than 4 scrap vehicles;
- g. burning:
  - 1°. household waste from outside the establishment;
  - 2°. industrial waste from outside the establishment;
  - 3°. hazardous waste from outside the establishment;
- h. putting household waste, industrial waste or hazardous waste on or into the ground to leave it there;
- i. compacting, ripping, cutting or breaking of ferrous or non-ferrous metal scrap by means of mechanical tools with a motor capacity or combined motor capacity of 25 kW or more;
- j. the storage, processing and destruction of the following wastes from human and animal health care:
  - 1°. infectious waste;
  - 2°. body parts and organs;
  - 3°. waste from cytotoxic and cytostatic drugs.

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### Annex 2. Related to Article 4.1, of this Decree EIA requirement or EIA assessment requirement

#### Part A Definitions

1. For the purposes of this annex, the following definitions shall apply:

*surface mineral*: mineral occurring in the ground, which can be extracted without underground mining;

*Spatial Planning schedule*: decision to adopt or amend a development plan as referred to in Art. 7 and Art. 13(1)(b) of the BES Spatial Development Planning Principles Act;

*capacity*: reasonably foreseeable capacity expansion in the foreseeable future;

2. For the purposes of this annex, the following definitions shall also apply:

*surface*: reasonably foreseeable expansion of the surface in the foreseeable future;

*setting up an establishment*: expansion of an establishment by setting up a new facility, or the construction of a new facility;

*expansion*: re-occupation or construction of permanent structures, developed areas or existing establishments;

*change*: reconstruction or other changes to permanent structures, developed areas or existing establishments.

#### Part B Activities, plans and decisions referred to in Art. 7.1 of the Act, in respect of which the preparation of an environmental impact assessment is mandatory

Column 1		Column 2	Column 3	Column 4
Nos.	Activities	Cases	Plans	Decrees
1	Construction of a new aerodrome		Spatial Planning schedule	Article 30 BES Aviation Act
2	Construction of a seaport		Spatial Planning schedule	Article 20 BES Maritime Administration Act
3	Construction of pier connected to land and located outside a port	For piers used for unloading and loading ships larger than 500 gross tons (GT)	Spatial Planning schedule	Article 20 BES Maritime Administration Act
4	Construction of an artificial beach		Spatial Planning schedule	Article 20 BES Maritime Administration Act
5	Construction of a marina		Spatial Planning schedule	Article 20 BES Maritime Administration Act
6	The construction of a marine outfall		Spatial Planning schedule	Article 20 BES Maritime Administration Act
7	Setting up of an establishment for desalination of seawater or extraction of heat or cooling from seawater	For activities involving treatment of a volume of water of 70 m3 per day or more	Spatial Planning schedule	Article 5.1 of the Act

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Column 1	Column 2	Column 3	Column 4	
Nos.	Activities	Cases	Plans	Decrees
8	The infiltration of water into the soil  or abstraction of groundwater from the soil as well as the modification or extension of existing infiltrations and abstractions	100 m³ per day	Spatial Planning schedule	Article 5.1 of the Act
9	Extraction of surface minerals,  raising or other use of the seabed	For seabed use over  an area of 0.50 hectares or more lake	Spatial Planning schedule	Article 20 BES Maritime Administration Act
10	Construction of an  aquaculture facility		Spatial Planning schedule	Article 5.1 of the Act and Article 20  BES Maritime Administration Act
11	Extraction of petroleum, natural gas or  other minerals		Spatial Planning schedule	Article 1(a) BES Mining Act
12	Setting up of an establishment  for the storage of petroleum, natural gas, petrochemical or chemical products	In cases where the activity  involves a storage capacity of 2,500 tonnes or more	Spatial Planning schedule	Article 5.1 of the Act
13	Setting up of an establishment  for the refining of crude oil		Spatial Planning schedule	Article 5.1 of the Act
14	Setting up of an establishment  for the manufacture of chemical products and the construction of related infrastructure		Spatial Planning schedule	Article 5.1 of the Act
15	Construction of a pipeline to  transport gas, oil or chemicals	In cases where the activity  involves a pipeline with a diameter of more than 20 centimetres and a length of more than 500 metres	Spatial Planning schedule	Spatial Planning schedule
16	Setting up of an establishment  for the production of electricity, steam or heat with a capacity of 5 megawatts or more		Spatial Planning schedule	Article 5.1 of the Act
17	Setting up one or more  interconnected facilities for generating electricity through wind power	where the activity involves  a combined capacity of 10 megawatts or more or 10 wind turbines or more	Spatial Planning schedule	Article 5.1 of the Act
18	Construction of the route of an overhead high-voltage power line	with a voltage of 30 kilovolts or more and over a length of 3 kilometres or more		Spatial Planning schedule
19	Setting up of an establishment  for the incineration, processing, landfill or deep disposal of non-hazardous waste	with a capacity of 2,000 tonnes per  year or more	Spatial Planning schedule	Article 5.1 of the Act
20	Setting up of an establishment  for the incineration, processing, landfill or deep disposal of hazardous waste		Spatial Planning schedule	Article 5.1 of the Act
21	Setting up of an establishment	with a capacity of 1,000	Spatial	Article 5.1 of the Act

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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

Column 1		Column 2	Column 3	Column 4
Nos.	Activities	Cases	Plans	Decrees
	for treatment of wastewater	population equivalents or more	Planning schedule	
22	An excavation	over an area of 1 hectare	Spatial Planning schedule	Article 6.12 of the Act
		or more		
23	The extraction of surface minerals	on an extraction site of 5 hectares or more or a number of extraction sites located in close proximity to each other with a combined area of 5 hectares or more	Spatial Planning schedule	Article 6.12 of the Act
24	The construction, alteration or expansion of a golf course and other recreational or tourism facilities	with an area of 8 hectares or more	Spatial Planning schedule	Article 5.1 of the Act
25	Construction of sites and structures for accommodation facilities	of 10 rooms or more in sensitive areas and buffer-zone sensitive area areas	Spatial Planning schedule	Article 5.1 of the Act

### Part C Activities, plans and decisions referred to in Art. 7.1 of the Act in respect of which the competent authority must assess whether they may have significant adverse effects on the environment due to the special circumstances under which they are carried out

Column 1		Column 2	Column 4
Nos.	Activities	Cases	Decrees
1	The extension of use or modification of the location of a runway or its extension or widening		Article 30 BES Aviation Act
2	The modification or expansion of a seaport		Article 20 BES Maritime Governance Act
3	The construction, alteration or extension of a pier connected to land and located outside a port	For piers used for loading and unloading vessels larger than 300 gross tons (GT)	Article 20 BES Maritime Governance Act
4	The modification or expansion of an artificial beach		Article 20 BES Maritime Governance Act
5	The modification or expansion of a marina		Article 20 BES Maritime Governance Act
6	The modification or extension of a marine outfall		Article 20 BES Maritime Governance Act
7	Construction, alteration or expansion of structures for abstraction or artificial groundwater recharge	50 m3 per day	Article 5.1 of the Act
8	The erection, alteration or expansion of an establishment for the desalination of seawater or the extraction of heat or cooling from seawater	For activities involving treatment of a volume of water of 25 m3 per day or more	Article 5.1 of the Act
9	The setting up, alteration or expansion of surface mineral extraction, raising of the seabed or other uses	For seabed use over an area of 0.25 hectares or more	Article 20 BES Maritime Governance Act
10	The modification or expansion of an aquaculture establishment		Article 5.1 of the Act and Article 20 BES Maritime Governance Act

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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

	Column 1	Column 2	Column 4
Nos.	Activities	Cases	Decrees
11	The setting up, alteration or expansion of an establishment intended for the storage of petroleum, natural gas, petrochemical or chemical products	In cases where the activity involves a storage capacity of 500 tonnes or more	Article 5.1 of the Act
12	The alteration or expansion of an establishment intended for the refining of petroleum		Article 5.1 of the Act
13	The alteration or expansion of an establishment intended for the manufacture of chemical products and the construction of related infrastructure		Article 5.1 of the Act
14	The construction, alteration or expansion of a pipeline for the transport of gas, oil or chemicals	In cases where the activity involves a pipeline with a diameter of more than 20 centimetres and a length of more than 250 metres	Spatial Planning schedule
15	The alteration or expansion of an establishment intended for the production of electricity, steam or heat with a capacity of 5 megawatts or more		Article 5.1 of the Act
16	The setting up, alteration or expansion of one or more interconnected plants for generating electricity by wind power	where the activity involves a combined capacity of 5 megawatts or more or 5 wind turbines or more	Article 5.1 of the Act
17	The construction, alteration or expansion of the route of an overhead high-voltage power line	with a voltage of 30 kilovolts or more and over a length of 1 kilometre or more	Spatial Planning schedule
18	The setting up, alteration or expansion of an establishment intended for the incineration, processing, landfill or deep disposal of non-hazardous waste	with a capacity of 1,000 tonnes per year or more	Article 5.1 of the Act
19	The alteration or expansion of an establishment intended for the incineration processing, landfill or deep disposal of hazardous waste		Article 5.1 of the Act
20	The setting up, alteration or expansion of an establishment intended for the cleaning of wastewater	with a capacity of 500 population equivalents or more	Article 5.1 of the Act
21	The excavation, alteration or expansion of an extraction site	over an area of 0.5 hectares or more	Article 6.12 of the Act
22	The setting up, alteration or expansion of surface mineral extraction	on an generation site of 1 hectare or more or a number of extraction sites located in close proximity to each other with a combined area of 1 hectare or more	Article 6.12 of the Act
23	The alteration or expansion of a golf course and other recreational or tourism facilities	with an area of up to 8 hectares	Article 5.1 of the Act
24	The alteration or expansion of land and buildings for accommodation facilities	of 10 rooms or more in sensitive areas and buffer-zone sensitive areas	Article 5.1 of the Act

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## EXPLANATORY NOTE

### General section

#### § 1. Introduction

##### **Basis and objective of the decree**

The BES Public Housing, Spatial Planning and Environmental Management Act (hereinafter the Act) provides the basis for this decree, the BES Establishments and Activities Decree (hereinafter the Decree). The Act contains the obligation to draw up rules by or pursuant to general order in council, which are necessary to protect the environment from the adverse effects that establishments in the public entities of Bonaire, Sint Eustatius and Saba may cause. This decree gives substance to this obligation and contains the detailed rules on the protection of the environment in the Caribbean Netherlands and principles for achieving a balanced system of environmental regulations in a ministerial regulation and island ordinances. This decree is an elaboration of the responsibility of the Minister of Infrastructure and Water Management (hereinafter IenW) for the environment on the islands, while at the same time giving the island governments room to develop local environmental regulations that take into account the local situation.

The islands boast rich biodiversity and a unique coral reef ecosystem. Given the growth in tourism and the increase in population on the islands, it is important to invest in environmental policies and regulations through an effective, implementable and enforceable set of rules. The rules in this decree form the basis for this and are further elaborated by the island governments. The Decree and the BES Regulation General Binding Rules for Establishments and Activities (hereinafter: the Regulation) take effect simultaneously and in their entirety for Bonaire and Sint Eustatius. For Saba, the decree takes effect in phases. The island regulations will then be adopted as soon as possible.

The decree is another step in the joint efforts of the European and Caribbean Netherlands to create environmental regulations that do justice to the great importance of protecting the environment and in particular the fragile ecosystem on the islands.

#### § 2. Reason and Background

##### **Rationale**

Because of the islands' geographical location and economic situation, the drafting of this decree has a long history and has been carefully coordinated between the Ministry of IenW and the island administrations. In the Caribbean Netherlands week of March 2013, it was agreed to carry out an Implementation Plan IAB BES <sup>1</sup> in which an earlier draft of the decree (2013 version) was assessed for feasibility and tested for implementation effects. Rijkswaterstaat commissioned the Ministry of IenW to draw up this IAB BES implementation plan and it was carried out in close cooperation with the public entities and some environmental services. During the implementation process,

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<sup>1</sup> Parliamentary Papers I 2011/12, 32 473, no. 15, p. 1



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various activities were carried out on Bonaire, including a legal assessment, for mapping the coherence of the rules from this decree and the local regulations and carrying out a modernity and effectiveness test, capacity building (training courses), investments in necessary facilities such as an ICT system and the drafting of manuals with the aim of being able to perform the tasks arising from the regulations efficiently. In addition, an institutional assessment was carried out. This included examining the following topics: the (additional) tasks that the directorates responsible for Licensing, Inspection and Enforcement (LSE) have to perform under the IAB, the required capacity, resources and knowledge. Additionally, the organisational structure and responsibilities within the boards were reviewed, as well as the relationships with cooperation partners.

In November 2017, a letter of intent was signed between the Ministry of IenW and the Bonaire Executive Council to promote the development of regulations and policies for a sustainable and safe living environment. In that context, there has been close cooperation between the Ministry of IenW and Bonaire to draft general rules for environmentally burdensome business activities in this decree that are tailored to the local situation and allow for sustainable economic growth. This cooperation also involves the other islands.

Ultimately, the IAB BES implementation plan and the Letter of intent resulted in a set of rules whereby the general binding rules under this decree are further elaborated in island regulations. This did justice to both ministerial responsibility and the development of local regulations by the island governments.

In April 2020, the Minister of Agriculture, Nature and Food Quality, and also on behalf of the State Secretary of Infrastructure and Water Management and the State Secretary of the Interior and Kingdom Relations, presented the Nature and Environmental Policy Plan Caribbean Netherlands 2020–2030 to the Speaker of the House of Representatives.<sup>2</sup> The Nature and Environment Policy Plan (hereinafter: NEPP) aims to improve environmental quality on the islands, with a particular focus on preserving healthy corals. Environmental quality improvement objectives include efficient waste management and effective waste water treatment. This fulfils (in part) the environmental policy plan referred to in Art. 1.4 of the Act when it comes to the topics mentioned. In the implementation agendas drawn up by the island governments, the objectives from the NEPP were translated into activities and projects, such as regulating waste separation at businesses, discharging waste water at adequate treatment facilities and setting standards regarding environmentally harmful activities by businesses. This decree also fleshes out and implements the NEPP and provides a legislative framework when it comes to business activities. In doing so, it contributes significantly to achieving these objectives from the NEPP.

### § 3. Legal basis

Article 5.1 of the Act stipulates that rules are to be laid down by or pursuant to order in council, which are necessary to protect the environment from adverse effects that establishments may cause to it. This decree fulfils this obligation under the law. This decree contains the rules for protecting the environment in the public entities of Bonaire, Sint Eustatius and Saba.

St Eustatius and Bonaire had a Hindrance Ordinance since 1993 and 1995, respectively, which covered environmentally harmful activities that take

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<sup>2</sup> Parliamentary Papers II 2019/20, 33 576, no. 190, p

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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

place on a business basis and are designated as requiring a permit. Saba's island council had declared the Windward Islands Hindrance Ordinance applicable.

At the time, the legislator stipulated in Art. 5.1 of the Act that by or pursuant to an order in council, rules shall be laid down, which are necessary to protect the environment from adverse effects that establishments may cause to it. It was announced that in cooperation with the islands, this general order would be drafted. In addition, a permit requirement has been introduced for the heavier categories of establishments. The BES Large Installations Environmental Management Decree (hereinafter Bgim BES) made an oil terminal on St Eustatius and two fuel storage facilities on Bonaire subject to permitting in 2015, with the Minister of IenW as the competent authority.

Given the Minister of IenW's responsibility for the environment on the islands, it is desirable to be able to steer the content of island instruments within the indicated legal frameworks. This working method has the advantage that the minister sets the frameworks for environmental regulation and can thereby monitor that certain minimum standards are guaranteed, while for each island the given standards are made more concrete so that local circumstances can be taken into account. It also provides more flexibility and opportunities to respond to changing circumstances.

This decree defines the subjects for which quality criteria are determined by ministerial regulation. The quality criteria included pursuant to the decree form the framework within which the island governments set further rules. Article 5.1(4) of the Act stipulates that further rules may be laid down in island regulations. The decree includes the possibility of imposing provisions for a bespoke solution, as per Art. 5.4 of the Act, which may be used to deviate from what is stipulated in the regulation in individual cases. These are standards that ensure the same or higher level of protection.

For clarification regarding waste water, it is relevant that this decree implements Art. 5.1(1) (second sentence) and (2) of the Act. This implies that general rules or a permit requirement is set by or pursuant to an order in council for certain categories of establishments. Those categories of establishments are designated in this decree. Only establishments within the meaning of Art. 1.2(1) of the Act are covered by the Waste Water Ordinance under Art. 4.26(2) of the Act.

#### **§ 4. Outline of the decree**

Chapter I of the decree contains the general provisions, such as the definitions, the duty of care, the competent authorities and the types of establishments. Under the Act, this decree designates categories of establishments, which may cause adverse effects on the environment. In accordance with the Environmental Management Activities Decree that applied to the European part of the Netherlands, types of establishments have been designated. The operators of Type I and Type II establishments, must comply with the general binding rules referred to in Art. 2.1(1) and (2) of this Decree. These are further detailed in the regulations and further elaborated in island regulations.

Type III and Type IV establishments are subject to a permit requirement, with Type III falling under the authority of the Executive Council and the Minister of Infrastructure and the Environment being the competent authority for Type IV. An important aspect is the demarcation of powers of the Minister of IenW from those of the Executive Council. Given the relatively small size of the islands and

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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

the related size of the civil service and administration, placing the entire implementation of the detailed rules with the local governments would put too great a strain on the commitment of civil servants and administration. For this reason and given the complexity of the environmental aspects involved, the decree designates the Minister of IenW as the competent authority for large, complex establishments (Type IV establishments). Until the date of effectiveness of this decree, this was also the case in the BES Bgim. The contents of the Bgim BES have been incorporated into this decree, adding a category IV establishment for storing gases with a storage capacity of more than 10 tonnes. For Type I, II and III establishments, the Executive Council is the competent authority. For each type of establishment, the person running the establishment has a duty of care, among other things. He must ensure that any adverse effects on the environment are prevented as far as possible, or if that is not possible, reduced as far as possible.

The second chapter contains rules for Type I and II establishments. In the interest of protecting the environment, it has been indicated that quality criteria will be established on various environmental topics. These quality criteria are detailed in the regulation, with customisation possible by the Executive Councils in the island regulations. The Island Council shall lay down further rules on the quality criteria.

The third chapter contains the rules for establishments requiring a permit. Thus, this chapter includes the application requirements of Type III and IV establishments and the aspects that the competent authority must take into account when determining best available techniques.

The fourth chapter, elaborating on Chapter 7 of the Act, designates the activities and plans that are subject to mandatory EIA and mandatory EIA assessment. This is further explained in the article-by-article explanation of Art. 4.1.

The fifth chapter is about making the necessary provisions for effective monitoring the obligations imposed by or under the law. These are rules concerning the living environment in the Caribbean Netherlands. The Minister of IenW is tasked with organising, facilitating and coordinating enforcement in such a way (in the chain) that it is efficient and effective in terms of the environment. The Minister of IenW supports the islands when it comes to knowledge and expertise and drawing up integrated inspection and enforcement policies and a corresponding implementation programme.<sup>3</sup> This inspection and enforcement policy and implementation programme are binding as policy rules on the Executive Council, which drafts and publishes them when it comes to implementation and enforcement. In terms of the policy rules, substantiated deviation is possible. Coordinated surveillance is given shape by the Minister of IenW organising a consultation structure to ensure a unified approach to surveillance of the islands (Art. 10.10 of the Act). Additionally, under the decree, rules on the quality of effective enforcement may be laid down by ministerial regulation. This will at least include rules on how inspections are carried out or sanctions imposed and on qualifications of supervisory officials. This is the interpretation of the law's potential for making rules on the quality of enforcement. The Minister of IenW reviews the established enforcement policy and its reasonable implementation. Under Art. 10.11 of the Act, the Minister of IenW may issue a direction if the enforcement policy is implemented inaccurately.

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<sup>3</sup> Parliamentary Papers II, 2020–2021 35 632, no. 12

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The last chapter includes transitional law. Permits granted before the date of effectiveness of this decree on the basis of the BES Bgim or the Island Hindrance Ordinances shall be considered permits as referred to in Art. 5.1(2) of the Act. This chapter also regulates that the date of effectiveness for the Public Entities of St Eustatius and Saba may be phased and at different times.

## § 5. Relationship to existing regulations

Articles 215 and 216 of the Bonaire, St Eustatius and Saba Public Entities Act stipulate that island regulations lapse if they regulate subjects provided for by an Act or Order in Council. However, there is a supplementary power for the islands as long as subjects provided for have not taken effect or have not been worked out. In addition to these articles of the Bonaire, St Eustatius and Saba Public Entities Act, Art. 11.23 of the Act contains transitional law, which stipulates that island ordinances in effect immediately prior to the date of effectiveness of the BES VROM (Public Housing, Spatial Planning & Environmental Management) Act shall continue to apply until the relevant general administrative measures take effect. With the date of effectiveness of this decree, the Hindrance Ordinances and the regulatory decrees based on them will therefore lapse, insofar as they relate to the subjects regulated by this decree.

The island councils adopt the island ordinances that give substance to Art. 5.1(4) of the Act. For the subjects or categories of cases that must be reflected in the island ordinance, this decree contains the frameworks and general quality requirements that must be met and that are further elaborated in the regulation. See also section 3.

In the European part of the Netherlands, the starting point within environmental law is to regulate activities as much as possible by general binding rules rather than by permits. This decree follows that system, taking into account the small scale of the islands. This means, for example, that for an activity that is carried out by only one establishment and, due to its small scale, no large-scale expansion of establishments for this activity is expected (e.g. a slaughterhouse or a hospital), the choice has been made to make these establishments subject to a permit requirement.

Apart from these types of establishments, the choice has been made to regulate as many activities whose expected impact on the environment is low or moderate (such as shops or garages) to the extent possible by general binding rules. This was done to avoid burdening the small administrations in small municipalities with drafting permits, for which the necessary legal and environmental knowledge is not always available. With the new general binding rules and their wider scope of application, improved implementation and enforcement are expected and thus more effective environmental protection. This principle is explained in detail in the explanatory memorandum to the law.<sup>4</sup>

In setting the new general binding rules and standards for drafting environmental permits, the aim was to achieve as much as possible the same level of environmental protection as in the European part of the Netherlands. Because of the difference, compared to the European part of the Netherlands, in the number and size of companies, natural circumstances and state of regulation, a relatively limited number of general binding rules from the Activities Decree on Environmental Management have been included in the regulation, in close consultation with both environmental advisers in the

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<sup>4</sup> Parliamentary Papers II 2009/10, 32 473, no. 3.

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European and Caribbean part of the Netherlands. These are those rules that are deemed most necessary and most feasible and affordable for preventing or minimising environmental problems, given the establishments currently present in the Public Entities. The new standards and rules are partly based on recent and widely accepted views in the European part of the Netherlands. When this decree takes effect, the BES Bgim shall expire. The provisions from the BES Bgim are included in full in this decree, with erroneous units from the Bgim corrected (e.g. 'tonne' instead of 'cubic metre').

### § 6. Implementability and enforceability

Pursuant to Art. 10.2 of the Act, the Minister of Infrastructure and the Environment and the Executive Councils, each insofar as they are authorised to do so, are responsible for the administrative enforcement of the provisions of or pursuant to the Act. For Type IV establishments, the Minister is responsible for administrative enforcement under Art. 10.2(1)(b) of the Act. For Type III establishments, under Art. 10.2(2)(d) of the Act, this is the Executive Council. For companies covered by general binding rules, Type I and Type II establishments, the administrative body to which a notification must be made is responsible for administrative enforcement. There is no notification requirement for Type I establishments, as these businesses have a limited impact on the environment. These businesses are regulated by general rules.

For the interpretation of administrative enforcement, it partly follows the European Dutch system. Article 10.3 of the Act declares Titles 5.1 to 5.3 of the General Administrative Law Act applicable for the purpose of this administrative enforcement. These titles deal with enforcement and remedial sanctions, including the order under administrative coercion or the order under penalty. The power to impose these sanctions is then vested, in Art. 10.4(1) of the Act, in the Minister of Infrastructure and the Executive Council, if they are competent authorities with regard to the establishments concerned. Under that article, it is possible to attach an enforcement order to a writ of execution once imposed to recover an order for incremental penalty payments.<sup>5</sup>

The officials of the Human Environment and Transport Inspectorate (hereinafter ILT) in the BES vrom Act (BES Designation of Inspector under the BES Vrom Act and supervisors of establishments and activities decree) are charged with the inspection of compliance with the provisions under or pursuant to this decree with regard to Type IV establishments.

The ILT has conducted an enforceability, implementability and fraud-proofing (HUF) test on this decree. The regulations concern (additional) inspection and enforcement tasks at companies in the Caribbean Netherlands that store gases with a storage capacity of more than 10 tonnes. The regulations have been assessed as enforceable, implementable and fraud-proof by the ILT. The implementation of the work means a small increase in the commitment required.

Chapter 5 of this decree is largely based on the Environmental Law Decree <sup>6</sup> (hereinafter: Bor) mainly as regards articles 5.2 to 5.5 of this decree. In

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<sup>5</sup> Title 4.4 of the General Administrative Law Act becomes applicable to the islands through an amendment to the Act, see Collective Act IenW 2022, *Parliamentary Papers II*, 2022/23, 36 268, no. 2, p.

<sup>6</sup> Decree of 25 March 2010, containing rules implementing the Environmental Law (General Provisions) Act (Environmental Law Decree), Stb. 2010/143.

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consultation with the islands, it was decided not to adopt all articles from the Bor, because the islands are at the beginning of professionalising VTH processes and tasks, and Chapter 5 is a first step in this regard.

On 4 October 2022, the State Secretary of IenW asked the ILT to conduct an investigation into VTH on Bonaire, Sint Eustatius and Saba. The Secretary of State for Infrastructure and the Environment also requested recommendations for improving the system and introducing so-called "checks and balances". The study was carried out in coordination with the Minister for Nature and Nitrogen of the Ministry of Agriculture, Nature and Food Quality (LNV). On 10 October 2022, the Bonaire authority asked whether the ILT could conduct an assessment of the ongoing internal improvement process of the Public Entity of Bonaire (OLB) and draw conclusions from it regarding inspection and enforcement in the field of environment and living environment. The ILT report was sent to the Speaker of the House of Representatives on 13 June 2023 and contains conclusions and recommendations regarding the implementation of VTH tasks for construction, the environment and nature.<sup>7</sup> The report has been studied and it has been concluded that the recommendations do not require amendments to this decree.

The recommendations of the ILT report will guide how inspection and enforcement (and human and financial resources) shall be organised. The ILT report has several recommendations including the recommendation that this decree (the IAB BES) should take effect quickly, but also the recommendation to place the implementation of VTH tasks with an environmental service. ILT's report led to agreements with the relevant departments and the island governments on entering into a relationship with an environment service to perform VTH tasks, including the implementation of this decree. Incidental cooperation with environmental services was established during the drafting of this decree, but the island governments have since agreed to explore options for structural cooperation. In addition, the members (ALV) of Netherlands Environment Agency (ODNL) agreed to explore the possibility of providing services to island governments. After this exploration, a CN-wide programme to improve the VTH system will be set up.

Even with structural cooperation with an environment service, the island governments will remain responsible for the performance of VTH tasks and part of the VTH process will continue to be carried out locally. To this end, improvement programmes have been agreed with the Bonaire administration for the Directorate of Spatial Development and Inspection and Enforcement in which the implementation of the decree will be shaped.

### **§ 7 Impact on the environment, business and government and areas of concern**

The administrative burden for establishments arising from this decree relates to compliance with the rules contained herein.

The implications of this decree for the living environment, business and government are reflected in the advice issued by the Departments of Inspection and Enforcement, Space and Development and Public Works of the Ministry of Infrastructure and Water Management on 13 September 2019. This sets out the level of ambition of this decree.

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<sup>7</sup> Letter from the State Secretary for Infrastructure and Water Management dated 13 June 2023, 22343-359.



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It is expected that when this decree takes effect, the environment will be protected more effectively.

### Impact on living environment

Previously, rules to protect the living environment applied to a limited number of businesses. Continuation of this situation would mean a deterioration in the quality of the living environment that could lead citizens to experience more nuisances. The aim of this decree is to limit adverse effects on the living environment so that no irreversible damage to soil and groundwater occurs as a result of contamination from the performance of soil-threatening industrial activities, or to limit or prevent this as much as possible. Additionally, the waste problem is countered by requirements on the storage and segregation of waste flows and the treatment of wastewater. Here, safety should be ensured so that there is no adverse impact on the surrounding area in case of calamities.

### Impact on business

The number and types of businesses and the financial impact on business were taken into account when drafting this decree. To effectively protect the environment and mitigate negative impacts, investments are required. Investment for business is twofold. These are investments in facilities, including: replacing cesspits for septic tanks and facilities for safe storage of hazardous substances and separation of waste. To spread the investments, this decree will take effect in stages. Furthermore, investments should be made in operations so that the facilities already in place and those yet to be realised are used (adequately). This will affect internal operations and will not incur any additional costs. These investments will lead to a reduction in the environmental impact of these business activities.

The introduction of the general binding rules from this decree will mean that many companies will no longer need a permit. This will create an administrative burden reduction.

### Impact on government

The implications for the government focus on knowledge and capacity. Knowledge involves bringing up to date the knowledge needed to implement, monitor and enforce this decree. In addition, the implementation of this decree and the scheme requires capacity.

More companies than now will fall under the general binding rules and will therefore not need a permit. This means a reduction in the administrative effort required for permitting. Additional capacity is needed for the notification requirement. Notifications should be recorded and monitored.

When this decree takes effect, it will bring more businesses under the environmental rules. This means additional capacity is needed for inspection and enforcement.

Additionally, capacity is needed to provide information on the implementation of this decree and the regulation. For example, an Environmental Information Point Caribbean Netherlands has been realised in Bonaire.<sup>8</sup>

## § 8. Coordination

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<sup>8</sup> Home – Environmental information Point Caribbean Netherlands ([infomilcn.com](http://infomilcn.com))

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As already indicated, there have been several consultations with Public Entities on the content of this decree in the form of official consultations. The version consulted on the internet was also submitted for administrative consultation.

In a response to this version, the Executive Council Bonaire sent a letter. This Executive Council requests that the explanatory memorandum further clarify the scope and interrelation of the various legal instruments. The decree has been updated accordingly by, among other things, further elaborating on Chapter 5. The interrelationship between the various legal instruments and their enforcement and monitoring is further explained in paragraphs 5 and 6.

In addition, the island governments mention the importance of communication on the content of the quality criteria. Communication on this decree has taken place through official and administrative consultation and the internet consultation and there have been talks and information sessions on the content of the decree with the industry association. Finally, the island government requests that transitional periods be taken into account and that the impact of the decree on the island and its businesses be taken into account when determining the date it takes effect. This has been taken into account.

Official and administrative consultation took place with the Island Councils of St Eustatius and Saba. The Sint Eustatius administration stressed the importance of an early date of effectiveness. The Island Council of Saba prefers phased dates of effectiveness.

## § 9. Advice, consultation and pre-assessment procedure

### ATR recommendation

This decree has been submitted to the Dutch Advisory Board on Regulatory Burden (hereinafter ATR). The board assesses proposed regulations for regulatory impact.

The ATR issued an opinion on 20 October 2021. The board recommends that when elaborating the general binding rules in the ministerial regulation, attention should be paid to consistency with adjacent regulations and to the methods used to support and communicate with SMEs. In drafting the regulation, consistency with related regulations will be taken into account. For that part of information provision related to this decree and regulation, an Environmental Information Point Caribbean Netherlands has been established.

Additionally, the board recommends assessing the regulatory pressure effects for companies subject to permitting and notification requirements and of the general binding rules according to the government-wide methodology. Bandwidths may be used here. The rules from which the regulatory burden arises are included in the regulation and island ordinance. The regulatory burden effects resulting from the regulation have been depicted in the explanatory notes to the regulation.

### Internet consultation

During the period from 15 September 2021 to 8 November 2021, anyone was given the opportunity, via publication of a draft of this decree on [internetconsultatie.nl](#), to comment on this decree. Several communication



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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

tools were used to inform the target groups concerned and affected about the internet consultation and the opportunity to react to the proposed decree.

Two responses were received in response to the internet consultation. One response stated the need for environmental protection measures and also called for attention to phased dates of effectiveness due to the necessary investments. This decree and the regulation take into account deadlines for necessary investments. The other response relates to a question about this decree and noise nuisance from generators. This has not resulted in any amendments to this decree.

### Pre-assessment procedure

Article 5.41 of the BES Public Housing, Spatial Planning and Environmental Management Act provides for the involvement of parliament in this decree through the pre-assessment procedure. The pre-assessment did not result in an amendment to the decree.

## § 10 Transitional law and date of effectiveness

This decree includes transitional law, which is explained in more detail in the article-by-article notes to Art. 6.1.

### Date of effectiveness

This decree shall take effect at a time to be determined by royal decree, which is set differently for the different Public Entities, articles and categories of establishments of this decree. These phased dates of effectiveness are necessary because the islands have different preferences as to the timing of effectiveness.

### Fixed moments of change

This decree shall take effect at a time to be determined by royal decree, which may be set differently for the different public bodies, articles and categories of establishments of this decree. Fixed moments of change have been taken into account.

## Notes on articles

### Article 1.1 Definitions

Article 1.2 of the Act defines a number of terms. These definitions also apply to this decree. Terms from this decree that are not defined in the law are included in this article.

### Article 1.2 Categories of establishments

Article 1.2(3) of the Act states that categories of establishments that may cause adverse effects on the environment must be designated by order in council. This is elaborated in Art. 1.2 of this decree, which designates four types of establishments. Annex 1 to this decree indicates the types of establishments belonging to the different types of establishments.

### First paragraph

Two requirements must be met for it to be an establishment within the meaning of the Act: the activity must fall within the concept definition of 'establishment' and the establishment must be designated in an order in council (Art. 1.2(3) of the Act).

Whether an establishment exists is determined according to the general

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definition in Art. 1.2(1) of the Act. This paragraph defines the term 'establishment' as follows: "any activity undertaken by man commercially or on a scale as if it were commercially, which tends to be carried out within certain boundaries."

This definition corresponds to the definition of 'establishment' used in the European part of the Netherlands under the Environmental Management Act. If any ambiguity exists as to whether an establishment exists, regulations and case law from the European part of the Netherlands may be consulted for information.

The definition shows that an establishment involves stationary activities of some scope, duration and regularity. In general, determining whether an activity is of a commercial nature seems relatively straightforward. It is more difficult to determine whether another criterion in the definition is met, namely that it must be an activity "on a scale as if it were commercially".

Although activities in the private sphere in principle do not fall within the scope of Chapter 5 of the Act, hobby activities such as keeping larger numbers of horses, dogs, cats, parrots, donkeys and having a music room at home can fall within the scope of the term establishment. Case law shows that this should take into account whether or not it is profit-oriented<sup>9</sup>, advertising and placing of advertisements, having staff, the number and type of means of production (e.g. animals), the storage of (raw) materials and goods, having an outlet (customer base) and suppliers and the like. Even if such activities are not for profit, their scale may be such that they should still be referred to as an establishment. Whether there is an entry in the Commercial Register of the Chamber of Commerce is irrelevant to whether there is an establishment.

The interpretation of the "within certain boundaries" criterion is interpreted broadly in case law. It need not be a boundary within a building or a cordoned-off area. Any activity of some duration and with some regularity, continuity and location can fall under the term establishment. The determining factor is always whether the activity takes place with some regularity (e.g. a few hours a day, once a year or a few days a month) and within certain boundaries.

Mobile installations are in principle not covered by the term establishment, unless it is a mobile installation parked in one fixed location (e.g. a Truki Pan<sup>10</sup>), anchored (e.g. ships with a fixed unloading point) or moored (e.g. floating sand dredgers). The conduct of an activity on 'public waterways' or 'public land' is – as shown by case law – subject to an additional criterion: an exclusive claim to or reservation of a defined part of the waterway or land.

### Second paragraph

The second paragraph distinguishes the four types of establishments. Annex 1 to the decree identifies these establishments and activities.

Type I establishments require no permit and no obligation to notify the competent authority when they are established or modified.

Type II establishments have no permit requirement, but must notify the establishment or change of establishment to the Executive Council. For

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<sup>9</sup> It is not a question of actually making a profit, but whether profit is sought (profit motive).

<sup>10</sup> This is the local name on Bonaire and other islands of a mobile stall at a fixed stand from which mostly hot food and drink items are sold.

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Type II establishments, in principle, the whole decree applies with the exception of Chapter 3 (Type III and IV establishments). The explanatory note to Art. 2.2 discusses notification.

Type III establishments are subject to permitting and must apply for their permit from the Executive Council that is the competent authority. These establishments are subject to the entire decree, with the exception of Chapter 2 (Rules for Type I and II) and Art. 3.3 (Type IV applications).

Type IV establishments, like Type III, are subject to permitting. These are the establishments to which the BES Bgim applied until this decree took effect. Additionally, a category has been added to Type IV establishments, namely establishments storing gases with a storage capacity of more than 10 tonnes. This follows the category classification of the 2015 Major Accident Hazards Decree (Brzo) as it was in effect in the European Netherlands until 1 January 2024. The Minister of IenW is the competent authority for Type IV establishments.

### Article 1.3 Competent authority

Art. 5.6(1) of the Act states that the island council is authorised to decide on an application for a permit. However, Art. 5.6(2) of the Act offers the possibility to stipulate in an order in council that the Minister of IenW is authorised to decide on the application for a permit with regard to categories of establishments designated in that order in council. Based on this sub-section, the BES Bgim had designated the Minister of IenW as the competent authority for a designated category, namely Type IV establishments. This line has been continued in this decree: Art. 1.2(1) and (2)(opening words and under d), of the decree stipulates that the Minister of Infrastructure and the Environment is the competent authority for Type IV establishments. The exact establishments and activities concerned are defined in Annex 1.

### Article 1.4 Duty of care

This article imposes a duty of care on whoever establishes, changes, alters or terminates an establishment. This is meant by the term: the person running the establishment. The duty of care in this decree acts as a safety net for activities in respect of which the tasks, powers or obligations in this decree cannot be regulated, or cannot be regulated sufficiently (exhaustively) in general binding rules and in the permit, but which may cause adverse effects on the environment. This prevents damage to the environment occurring or threatening to occur, which cannot be enforced because this decree does not provide for it.

For the competent authority to take enforcement action, it must be a situation in which the person setting up, changing, altering or terminating the establishment knows or could reasonably have known that adverse effects on the environment are occurring, while those effects may or will occur. In cases where the person running the establishment could not reasonably have known that his actions would harm the interest of protecting the environment, direct enforcement action is not an issue. That situation is beyond the scope of this provision. This may be the case, for example, when waste water is discharged into a public sewer, with the volume of wastewater discharged exceeding the capacity of that sewer.

As a result, the efficient operation of that sewer may be compromised. Because this depends on the characteristics of the sewage system and the extent of other discharges, the person running the establishment will often not be able to see for himself that his actions have led or could have led to

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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

disruption of the efficient treatment of the sewer.

Energy efficiency requires that the technology to save energy is not only in place, but also effectively managed and maintained to maximise energy savings.

Effective management and maintenance means well installed, well set up and well maintained.

Efficient use of raw materials means taking measures against the waste of those raw materials and taking measures for (water) conservation.

Incidentally, the law contains a general duty of care in Art. 1.3, imposed on "everyone". There is a need for such a general duty-of-care provision to act against environmentally threatening behaviour. After all, it can happen that by performing or failing to perform an activity, specifically defined environmental regulations are not violated, while the person running the establishment can be blamed for behaving in a socially improper manner. In such cases, action can be taken under this provision. The basis for the specific duty of care set out in Art. 1.4 of the Decree lies in Art. 5.1(1) of the Act, which states that by or pursuant to a general order in council, rules will be laid down, which are necessary to protect the environment from the adverse effects that establishments may cause. It should be noted that the provision will not be enforced under criminal law (see Parliamentary Papers II 1992/93, 21 246, no. 37), but mainly under civil law. This provision can provide a starting point for determining whether a particular act is unlawful in civil law and could also play a role in administrative enforcement.

### Article 2.1 Quality criteria

This article lays down quality criteria that the person who sets up or modifies, changes, alters the operation of, or terminates an establishment must meet when activities causing adverse effects on the environment are carried out.

As topics for the quality criteria, all common environmental aspects in the broad sense are included. For example, in the case of sub-section 2(k), safety includes the safety topics of fireworks, fire safety, storage of hazardous substances, delivery of fuels. It is about safety risks to people and the environment. This also applies to Part I, namely human health standards. These examples are not exhaustive and other health and safety standards may be present. Additionally, environmental aspects characteristic of the islands' environment were chosen, such as protecting their coral reef ecosystem.

The term 'quality criteria' does not appear in Art. 5.1(4) of the Act, on which this article is based, but they are considered to be the 'provisions' contained therein. This term was chosen in agreement with the islands because they should be seen as safeguards for a conclusive system.

The quality criteria will be further elaborated by ministerial regulation. Pursuant to Art. 5.1(4) of the Act, the Island Council must specify in an island ordinance the subjects on which quality criteria are set, which will be further detailed in a ministerial regulation. To align with local circumstances and wishes when it comes to further regulating quality criteria, the instrument of ministerial regulation was chosen. It can be adjusted faster annually in consultation with the islands. The quality criteria set a lower limit. This allows the islands to make the criteria more concrete and tailor them to the local situation and specific environmental ambitions. It also provides scope to further refine regulations and set a higher ambition where desirable.

### Article 2.2 Type II establishment notification

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As explained above, this decree entails a notification requirement for establishments that are not Type I, III or IV establishments. The main purpose of the notification is to inform the administrative body that an activity requiring notification is being carried out. Based on a notification as referred to in this article, a provision for a customised rule may be imposed (see Art. 2.3).

Paragraph 1 also requires notification of changes to an establishment or its operation. This notification is not required if a notification has been made previously and no deviation from the information provided with that earlier notification arises. The information that would have to be provided under paragraph 4 is directly linked to the notification. If the change to the establishment or its operation results in additional data having to be provided under paragraph 4, then there is a deviation from the data provided with the previous notification. The exception referred to in paragraph 2 is therefore not met.

### Article 2.3 Provisions for a customised rule for Type I and II

In most cases where environmentally harmful activities are carried out, the general binding rules will suffice. However, in one-off cases where the general binding rules are not appropriate, there is the possibility of customisation. The basis for imposing provisions for a customised rule is found in Art. 5.4(3) of the Act. That article allows the administrative body to make regulations, which deviate from the general binding rules laid down by or under this decree. These regulations are seen as provisions for a customised rule, as customisation is provided for the deviation. This depends on the applicant. Provisions for a customised rule are regulations that aim for the same level of environmental protection as, or a higher level than, the quality criteria set by or pursuant to this decree and its elaboration in the island ordinances. Imposing additional requirements may also involve specifying a quality criterion by provisions for a customised rule. This interpretation will also have to provide the same or higher level of environmental protection. The reason for the competent authority to impose such a requirement may, for example, be due to specific geographical or environment-related aspects of the activities or establishment. The judgement containing the provisions for a customised rule shall contain an explanatory memorandum containing the justification for the provisions for a customised rule.

Paragraph 2(a) deals with the balance that the competent authority makes between the interests of business, the interests of the immediate residential area and the environmental impact. The period for public consultation is six weeks. This is in line with the deadline in Art. 3.16 of the General Administrative Law Act.

### Article 3.1 Permit requirement

This article only regulates the obligation for those who set up, change or alter the operation of a Type III and IV establishment to apply for a permit. The obligation to have a permit already follows from Art. 5.1(2) of the Act.

Setting up, operating, changing or altering the operation of an establishment as referred to above without a permit is prohibited under Art. 5.1(2) of the Act. Violation of that prohibition is an offence under Art. 10.13(1) of the Act.

### Article 3.2 Type III establishment permit application

#### Paragraph 1

Part b

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The cadastral designation of the establishment is important for exact designation and identification of the establishment. When monitoring compliance and possible criminal enforcement actions under Art. 10.13 of the Act, such data is indispensable. Details of the location of the establishment will usually be provided by means of one or more floor plans.

#### Part d

With the information on the nature of the establishment, the applicant should indicate the main key elements of the establishment that characterise it. Information on the layout of the establishment shall be provided by the applicant by submitting with his application one or more floor plans, showing, for example:

- the boundaries of the establishment's premises;
- the location and layout of the buildings;
- the purpose of the distinct (working) spaces.

The application may also include details of the specifications of equipment and systems used in the establishment. This could include a description of the main characteristics of the main equipment or systems present in the establishment and any special materials or special types or designs of such equipment or systems. Furthermore, information concerning the codes, standards, guidelines or standards applied or to be applied in the design or realisation of such equipment or systems may be relevant in this context.

#### Part e

The data on the activities or processes must be such that the competent authority and all others involved in the application (consultants, local residents, etc.) have a clear understanding of the activities to be carried out at the establishment.

It is essential to outline those activities and processes and their interrelationships, which are relevant for an assessment of the potential adverse effects on the environment. Indeed, the description of the activities of environmental significance forms the basis on which the environmental health assessment of the establishment can take place.

When providing data on the techniques or systems to be used, the first thing to consider is structural, technical and process-specific logically ordered units or means, within or on the basis of which the activities or processes take place. This may involve the environmental health assessment of, for example, storage tanks, tank pits, pressure containers and silos and the like. The term plants can include machinery, tools, tanks, reactors, heat exchangers, compressors and the like, as well as their interrelationships.

Where necessary for a proper assessment of the environmental aspects, the data will also have to include information on the function that the technologies or systems have for the establishment, and whether any special materials, designs, processes or substances are involved. It may also be relevant for the assessment of environmental impacts by the competent authority that the location of the facilities is indicated in the application.

#### Part f

This obligation is limited in two ways. The first limitation is indicated by the

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words “the data characteristic of the activities and processes”. These are those data on the basis of which the competent authority can form a proper picture of the activities or processes taking place in the establishment.

A second limitation lies in the words used in part e, “that may reasonably be relevant to the adverse effects on the environment”. This means that for the assessment of environmental impact, irrelevant substance or product data need not be included in the application.

#### Part g

A description of the maximum capacity of the establishment or the distinct components or production units may be necessary to gain a more informed understanding of the potential environmental impact of the establishment.

Establishments may consist of components or sections, each of which has a different maximum capacity. The capacity of such a component or section will sometimes depend on the maximum capacity of another section. It is then important for the assessment of the application that in those cases the capacity of those components is also indicated.

#### Part h

The times of the day on which, or the periods during which, the establishment operates are relevant for the decision on the application and the regulations to be imposed by the permit. Partly on this basis, the more ‘classic’ environmentally harmful aspects of the establishment can be assessed, such as general nuisance, noise nuisance caused by activities inside the establishment, by supply and removal or storage and transshipment of goods, by human traffic, by vibrations or nuisance caused by light emissions.

#### Part k

The application will have to systematically include data on the environmental impact that the establishment may cause in normal operation. This refers in each case to the provision of data relating to emissions to atmosphere, water and soil. It may also be relevant for the assessment of environmental impacts by the competent authority, for example, to provide data on the location of emissions.

For the sake of completeness, it is noted that Art. 1.2(2)(b) of the Act states that environmental consequences include those related to: the efficient management of waste, the consumption of energy and raw materials and the movement of people or goods to and from the establishment.

#### Part l

Permit applications for establishments should include a so-called waste sub-section. Partly, this obligation is already met by part k, which requires the applicant to include data in its application on the nature and extent of environmental pollution.

This should include the nature and quantity of waste generated at the establishment.

Otherwise, this article provides guidance on the content of the waste paragraph, namely by requiring the applicant to provide information on the measures that have been or will be taken at the establishment with regard to



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preventing or reducing the generation of waste at the establishment. And if they arise, measures will have to be taken aimed at putting them to good use.

Waste flows should explicitly include those waste flows arising from cleaning and purification processes for the prevention of environmental pollution (such as cleaning through filters, flue gas cleaning, oil and grease traps and water treatment).

### Part n

Under Art. 5.2(1)(c) of the Act, the decision on the application must in any case include the developments that can reasonably be expected in relation to the establishment and the area where the establishment is or will be located. The person who can best indicate what the likely developments regarding the establishment will be is the applicant himself. Therefore, a requirement is imposed here for the applicant to provide this information. If it is reasonably foreseeable that technologies or materials will also become available in the short or medium term that will prevent or further reduce the environmental impact of the establishment, this is also relevant information for assessing the application.

### Paragraph 2

A non-technical summary means that the summary is comprehensible to the general public and contains sufficient information to form an opinion on the permit application and the impact the establishment might have on the environment.

### Paragraph 3

Paragraphs 2, 3 and 4 are listed separately as applying to a Type IV establishment permit application. They have not been added to paragraph 1. The reason is that paragraph 1 deals with the written, substantive information to be provided. Paragraph 3 does not cover information to be supplied. Here it is about authenticating documents and not having to provide information already in the possession of the competent authority.

### Paragraph 4

Article 5.23 of the Act regulates cases where the permit is granted for a period to be determined by that permit. Article 5.23(1)(a) of the Act provides that the competent authority may stipulate that the permit is valid only for a period of up to five years, to be determined at the time, if the establishment is temporary by its nature.

To this end, this article stipulates that the applicant must state in his application whether in this case it is a temporary establishment.

### Paragraph 5

Paragraph 5 indicates that data already in the possession of the competent authority need not be provided (again). However, this must involve exactly the same data.

### Article 3.3 Type IV establishment permit application

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## Paragraph 1

Paragraph 1 of this article states that a permit application for a Type IV establishment must provide all the information listed in Art. 3.2(1) and (2). In addition to this information, the applicant for a permit for a Type IV establishment shall also provide the information listed in parts a, b and c of this paragraph. In other words, an application for a Type IV establishment permit is subject to additional requirements compared to an application for a Type III establishment permit.

### Part a

In part a, there is a requirement to do a so-called quantitative risk analysis and provide the results to the competent authority. Given the major adverse environmental effects that accidents from Type IV establishment activities can cause, the requirement to conduct such an analysis is justified. Through quantitative risk analysis, a statistical determination is made of the risks to the environment and stakeholders due to high-risk business activities. These include the possible consequences of accidents resulting from the storage, transport and handling of hazardous substances, such as toxic emissions, fire or explosion and air, water or soil pollution. Accident scenarios are developed for the relevant risks. Computer models are used to create simulations for the theoretical evolution of a given risk to accident scenario. A risk analysis can then be done. The findings resulting from this analysis are provided to the Minister of IenW as the competent authority at the time of the permit application.

### Part b

The decision on the application will in any case include the effects that the establishment may cause to the environment (paragraph 1(b)). Additionally, the permit will have to specify the targets to be achieved by the permit holder in the interest of protecting the environment. For this purpose, it is also important that the applicant indicates the way in which he identifies and records the environmental burden caused by the establishment. The applicant bears primary responsibility for indicating the most appropriate way to establish and monitor the environmental impact of the establishment.

### Part c

A safety report shall be required with the application for authorisation if the activity is that of a Type IV establishment referred to in Annex 1.

## Paragraph 2

Article 3.2(1)(k) of this decree requires the applicant to provide data on the environmental impact that the establishment may cause under normal operation. Unusual events, such as malfunctions in the production process or in environmental facilities deployed in the process, can cause marked changes in emissions at establishments compared to the regular pattern.

It is therefore important to understand in advance any unusual occurrences that could reasonably occur in the production process and the environmental impact the establishment may cause as a result.

What is to be understood by "any unusual occurrences that may reasonably be expected to happen" cannot be stated in general terms and depends, among

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other things, on the nature of the establishment and the specific operating and environmental conditions. In general, this concept should be interpreted broadly. Indeed, the consequences of such an incident can be significant for people and the environment. For example, fire and storm damage are in any case to be counted as an unusual occurrence, which is reasonably likely to happen. It may also include flooding in places where, given the elevation of the area in which the establishment in question is located, it could reasonably occur. The said information must be submitted if it is necessary for the assessment of the application.

Incidentally, these are not just adverse events that the applicant can reasonably prevent by taking measures. Information should also be provided on any unusual occurrences that cannot be overcome by measures, or that are difficult to overcome, and the potential risks associated with them. Understanding this is necessary to assess, for example, the acceptability of the establishment as such or that of a specific location of an establishment.

### Article 3.4 Best Available Techniques

Parts a to m lay down rules for determining Best Available Techniques (hereinafter BAT). These rules apply as criteria or ground rules for the interpretation and elaboration of BAT for Type III and IV establishments. The specific interpretation and elaboration of BAT are regulated at the level of the permit regulations on the basis of the emission limit values set by the competent authority and the associated maximum achievable limit on emissions or pollution from the establishment after assessing their effects on the environment.

### Paragraph 2

The competent authority has some discretion when applying BAT in the permit. In determining the desired level of protection and techniques based on it, the competent authority shall take into account the physical state, nature and type of establishment and the systems or processes therein, as well as the geographical location and local environmental conditions. Possible transitional conditions may also take into account the already existing applied rules on BAT, the investments scheduled and necessary on that basis and the time frames taken into account for the phasing and implementation of these investments.

### Paragraph 3

This decree may lay down further rules on how to determine or establish BAT or apply BAT in the permit for Type III and IV establishments. These rules may concern the designation of certain national or international information documents on BAT that the competent authority must take into account when granting or modifying a permit (paragraph 1(l) and (m)). The designation of documents must also be assessed in the light of the other ground rules (paragraph 1(a through m)).

These ground rules include the use of effective techniques to minimise adverse effects on the environment, also considering their feasibility, given the industry to which the establishment belongs.

Under the Bgim BES BAT Designation Regulations, which apply to this decree, Bgim BES has been designated:

Reference Document on Best Available Techniques Emission from Storage, July 2006 (BREF Storage and transshipment of bulk goods);

Reference Document on Best Available Techniques Large Combustion Plants,

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July 2006 (BREF Large combustion plants);

Reference Document on Best Available Techniques in Common Waste Water and Waste Gas Treatment, February 2003 (BREF Waste gas and wastewater treatment);

Dutch Soil Protection Guideline (NRB) of April 2012; Dutch Air Emission Guideline (NeR) of July 2012;

Hazardous Substances Publication Series 15 'Storage of packaged hazardous substances' dated December 2012 (PGS 15);

Hazardous Substances Publication Series 29 'Guideline for above-ground storage of flammable liquids in vertical cylindrical tanks' dated October 2008 (PGS 29);

Hazardous Substances Publication Series 30 'Liquid fuels: above-ground tank systems and delivery installations' dated December 2011 (PGS 30);

CIW note on unforeseen discharges designating MRA and the use of Proteus as state-of-the-art.

If such information documents are not available for or applicable to certain systems or processes, the ground rules mentioned in paragraph 1 should also be taken into account when determining BAT for an establishment. For example, some bulk storage and transshipment documents may not have specific requirements for the storage of hazardous substances as an activity within an establishment. In the absence of information documents, BAT remains the standard, whether or not based on expert information other than said documents. In this case, techniques shall be chosen that, in the opinion of the competent authority, ensure a potentially comparable level of environmental protection, proven in practice, with respect to the systems and processes concerned.

#### Article 3.5 Type III and IV establishments notification of change

Article 5.25(6)(a) of the Act states that rules must be laid down by or pursuant to an order in council regarding the information to be submitted with a notification of a change of an establishment or its operation, as referred to in Art. 5.25(1)(b) of the Act. This refers to a change that does not result in different or greater adverse effects on the environment than those which the establishment is allowed to cause under the permit granted. Under Art. 5.25(3) and (4) of the Act, the competent authority must issue a statement no later than six weeks after receiving the notification as a response to the notification. Public notice must then be given no later than two weeks after the declaration is published. In addition to inspecting the documents relating to the notification free of charge and providing a copy of the documents on payment of a fee, the competent authority will have to publicise the notification. If the competent authority considers that the change does have different and greater adverse effects on the environment than the permit allows, it may decide to amend the permit accordingly under articles 5.28(2), 5.29 and 5.31 of the Act.

#### Article 3.6 Public notification

Under Art. 5.26(6)(b) of the Act, rules on the public notification of the statement issued in response to a notification of a change must be laid down by or pursuant to an order in council (see Art. 3.5 and its explanatory note). This obligation is fulfilled in this article. Under sub-section 2(c), the applicant must

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provide insight into whether or not the change of establishment will result in an obligation to have an environmental impact assessment carried out. Ultimately, it is up to the competent authority to assess that.

### Article 3.7 Financial security during permitting

Article 5.21(1) of the Act aims to ensure that the permit of establishments designated in this decree may include requirements to provide financial security for the fulfilment of the obligations imposed by the permit. These are establishments that may cause serious adverse effects on the environment and are designated as Type III and IV establishments in this decree. These are costs that will definitely be incurred. Therefore, the permit holder cannot insure against it. Paragraph 1(b) deals with liability for environmental damage. Environmental damage can include damage caused by business activities to the physical environment, such as damage to soil and pollution of groundwater, as well as damage to the coral reef ecosystem. Pursuant to Art. 5.21(3) of the Act, an order in council may set further rules regarding the amount and term of the security. Paragraph 2 is the elaboration of that article. Paragraph 2 states that if there is a requirement as a result of which insurance must be taken out, the duration of such insurance shall be specified in the permit.

### Article 3.1a Categories of persons belonging to Article 1.2(1) of the Act

Article 1.2 of the Act defines what constitutes a bathing establishment. It must be a place open to the public and equipped for swimming or bathing, together with associated land, buildings, timetables and equipment. Places accessible to persons belonging to categories designated by order in council may also be considered as bathing establishments. Part b designates these categories of persons. These are persons in a specific capacity and persons receiving care in a healthcare institution or establishment where physiotherapy or inpatient or outpatient care is provided. For persons in a specific capacity, bathing establishments are dedicated to certain groups of people. For example, swimming pools accessible only to members of a club. As a result, establishments where these persons swim are also bathing establishments within the meaning of the law.

### Article 4.1 Environmental Impact Assessment

The designation of activities subject to EIA is in line with the Bonaire Nature Conservation Island Decree (A.B. 2010, no. 15). A deliberate choice was made not to include all activities listed in the Environmental Impact Assessment Decree, which is valid in the European part of the Netherlands until 1 January 2024. Indeed, most of these activities do not occur on the BES islands. The advantage of joining the Bonaire Island Decree is that the island government is familiar with the regulations regarding environmental impact assessment. All included activities are also considered relevant to the islands of Sint Eustatius and Saba.

The thresholds included in column 2 are also in line with the Bonaire Nature Conservation Island Decree. These thresholds are generally lower than the thresholds of the Environmental Impact Assessment Decree. This can be justified in relation to the more small-scale nature of the islands. The set-up or start-up of the activities or establishments listed in column 1 is subject to EIA. Changing or expanding an establishment or activity is subject to an EIA assessment. This will allow the island government to, for example, allow limited changes to an establishment without having to have an environmental impact assessment report drawn up. In a number of cases, an environmental impact assessment report on the spatial development plan will be sufficient to include the potential environmental impacts in the decision-making process.

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for plans and projects.

For all activities taking place in sensitive areas or buffer-zone sensitive area, which may lead to significant adverse effects on landscape or landscape values or nature or wildlife values, a EIA assessment requirement has been established based on Art. 7.1(1)(b) of the Act. The EIA assessment requirement is set out in Art. 4.1(3) of the decree. Also, under Art. 5.1(2) of the Act, an environmental permit is required for the categories of activities in Annex 1 of this decree.

For a number of categories of activities in the decree, column 2 of part C of the annex contains a threshold value expressed as a unit of capacity or area. Where necessary, a distinction has been made between processing capacity (input) and production capacity (output). With the concept of capacity, it is important that the capacity must relate to a proposed activity. This fact is especially important in the case of changes of establishments with different activities subject to EIA. For example, a chemical manufacturing establishment, which burns its own (non-hazardous) industrial waste, wants to increase the capacity of its incinerator. In determining the EIA requirement of this proposed change, the threshold of category 18 (waste) of Art. C applies and not that of category 13 (the alteration or expansion of an establishment for the manufacture of chemical products and the construction of related infrastructure). When determining the capacity of a plant, the design capacity is used as the starting point for the EIA requirement. Underlying this premise is the idea that the design capacity will determine the environmental impact and usually corresponds to the capacity included in the permit application, including foreseeable developments.

The use of a threshold listed in column 2 should also take into account the reasonably foreseeable expansion of capacity or area in the foreseeable future. For example, in cases where a permit is sought for setting up a treatment plant for household waste with a treatment capacity of 75 tonnes per day, where it is already known when the permit application is submitted that a permit will be sought to double the capacity in the foreseeable future, the existence of an EIA requirement is determined not only by the capacity stated in the application, but also by its foreseeable expansion. What exactly should be considered "reasonably foreseeable expansion in the foreseeable future" will have to be assessed on a case-by-case basis. Observing the five-year limit seems realistic in this regard.

The concept of alteration of an establishment refers to a change in the establishment. When applying the EIA review requirement, what matters is whether the change will lead to an increase in environmental impact that violates environmental policy or leads to concerns from local residents. If a change to an establishment is notifiable rather than requiring a permit, there is no EIA (assessment) requirement. There is then only a minor or favourable environmental impact which, according to the existing rules of the law, makes a notification sufficient.

The term 'extension' also includes the re-use of a previously constructed work, developed area or existing establishment. These are situations where a new decree is needed from the competent authority to reinstate the work.

The term setting up an establishment should include an expansion thereof by the creation of a new facility. The term 'facility' does not mean the same thing as the term 'establishment' in all cases. An establishment may consist of several facilities. An EIA (assessment) requirement applies if the expansion as such meets the description in columns 1 and 2 as well as 3 or 4 of parts B or C of Annex 2.



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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

## Article 5.1 Inspection and enforcement policy

### Paragraphs 1 through 3

Article 10.2(1) of the Act specifies the provisions for which the Minister of Infrastructure and the Environment or the Executive Council are responsible when it comes to the enforcement of administrative law.

Policies are being drafted for such enforcement. The inspection and enforcement policy contains policy rules within the meaning of Art. 10:3 of the General Administrative Law Act. These policies were adopted on the basis of a programme-based and risk-driven approach and methodology. They entail that based on the results of a risk analysis, the governing body sets priorities and then realistic and measurable objectives. In doing so, the Minister of IenW or the Executive Council determines which activities are needed to achieve these objectives. To ensure that the adopted enforcement policy and implementation programme referred to in Art. 5.2 can be adequately implemented, it is important that the implementation framework is adequately equipped. This should include ensuring that capacity is sufficient. In the absence of capacity or expertise, it will have to be supplemented or hired.

During the implementation process under the IAB Implementation Plan, experience has already been gained with support through the knowledge and expertise of environmental protection authorities.

The inspection and enforcement policy should also provide insight into the various instruments that can be used to promote compliance with laws and regulations. These are at least an inspection strategy, a sanction strategy and compliance promotion. Additionally, agreements with other administrative bodies (such as ILenT and Rijkswaterstaat) or organisations (including the nature organisations on the islands) and the bodies in charge of criminal enforcement (the Public Prosecutor's Office, police and other investigative services) are included in the enforcement policy. In doing so, the policy could, for example, agree with the public prosecutor's office which offences are prioritised for prosecution. Among other things, the agreements also provide insight into those cases where more than one competent authority is involved in enforcement or where multiple enforcement and investigative agencies are involved. For example, operations in the nature reserve or underwater reserve and construction activities.

To structure the entire process of programme-based and risk-based enforcement, the model of a conclusive policy cycle is used, the *Big Eight*. The *Big Eight* is the name for the combination of two cycles: the strategic policy cycle and the operational implementation and enforcement cycle. It is the tool to achieve a cyclical and conclusive policy and implementation process (plan, do, check, act).

### Paragraph 4

The Minister of IenW or the Executive Council, insofar as authorised to do so, coordinates the inspection and enforcement policy with the other administrative bodies involved, such as the ILenT and Rijkswaterstaat, and the bodies in charge of criminal enforcement (public prosecutor, police and special investigating officers). As mentioned, cooperation agreements are included in the compliance and enforcement policy.

### Paragraph 5



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Inrichtingen- en activiteitenbesluit BES ([Stb. 2023, 493](#))

Title 4.3 of the General Administrative Law Act applies to the inspection and enforcement policy. These are the provisions that deal with the nature of policy rules. The intention is for both the Executive Council and the minister to follow the policy and only deviate from it when justified to do so. It is about the interpretation of enforcement powers.

### Article 5.2 Implementation programme

The Minister of IenW or the Executive Council also draws up an annual implementation programme for its enforcement activities. The implementation programme defines how the inspection and enforcement policy is implemented in practice per calendar year. Enforcement activities should take place in accordance with the priorities, stated objectives and strategies to be applied of that policy. The governing body will further develop the implementation programme into a work plan or an inspection schedule for the enforcement organisation. It describes, among other things, which instruments, such as inspections and compliance promotion, are deployed, which projects are carried out and the deployment of employees (FTEs) of the enforcement body.

The Minister of Infrastructure and the Environment or the Executive Council shall coordinate the implementation programme with the other administrative bodies involved and the bodies in charge of criminal enforcement (public prosecutor, police and special investigative services).

### Article 5.3 Monitoring and evaluation

In order to determine whether the set objectives of the inspection and enforcement policy and the implementation programme are being met, it is monitored whether planned activities have been carried out and whether the set objectives have been achieved. In turn, this information will be used for the necessary reports and to adjust the inspection and enforcement policy and implementation programme if necessary. If certain objectives prove unachievable, the inspection and enforcement policy will be adjusted accordingly. To establish this through monitoring, it is important to use good performance indicators. These include the number of inspections carried out, violations detected and complaints and notifications dealt with within a certain period of time.

### Article 5.4 Reporting

This article stipulates that the Executive Council reports annually to the Island Council and the Minister of IenW on the achievement of the objectives and priorities of the enforcement policy and the implementation programme and implementation of the agreements with other administrative bodies involved and the bodies in charge of criminal enforcement. The report and its evaluation are of interest to other governing organs such as the ILenT and Rijkswaterstaat.

### Article 5.5 Publication

The enforcement policy, implementation programme and report are published by the Executive Council by posting the documents on the websites known for that purpose. These are mentioned on page:

<https://www.overheid.nl/caribisch-deel-van-het-koninkrijk>. The inspection and enforcement policy has the status of a policy rule and therefore this policy will also be published in the Dutch Government Gazette. In this way, it will be sufficiently communicated to the public and formally announced.

### Article 5.6 Further rules

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This article provides that further rules on the quality of implementation and effective enforcement of the Act may be laid down by ministerial regulation. This is about setting rules on how to supervise compliance with the provisions of or under the Act. Specifically, this involves rules on imposing sanctions (such as the application of the Cabinet memorandum on Limits to Tolerance), qualities with which compliance must comply such as, for example, frequencies of inspections.

## Article 6.1 Transitional law

### Paragraph 1

Pursuant to this article, current permits issued pursuant to the BES Bgim or the island ordinances referred to in the article are brought under the regime of the Act: they are considered a permit in the sense of Art. 5.1(2) of the Act. As such, this decree also applies to these permits.

### Paragraph 3

For operators of establishments already carrying out their activities without a permit prior to this decree taking effect, they will have to apply for a permit in a short period of time if their activities become subject to the permit requirement under this decree. The very short deadline of one month was chosen because of the great importance of bringing existing activities into compliance with this decree and having a current and complete permit for carrying out those activities. Article 11.22 of the Act states that the competent authority shall ensure that a permit in respect of a subject matter provided for by the Act, issued before the Act takes effect, complies with the Act no later than one year after that time. This also applies to permits granted before this decree took effect.

### Paragraph 4

In the situation where an application for a hindrance permit under Art. 3 of the Bonaire Hindrance Ordinance or the Sint Eustatius Hindrance Ordinance 1993 was submitted before this decree took effect, the old law shall continue to apply:

- a. if the decision is subject to appeal: until the decision becomes final,
- b. if the decree is not subject to appeal: until the decree takes effect.

This means that until then, the old law is valid and thereafter the permit will be considered a permit under Art. 5.1(2) of the Act.

### Paragraph 5

Paragraph 5 deals with transitional law in relation to appeals and to claims relating to decisions taken under the BES Bgim or the said Hindrance Ordinances. This shall continue to be governed by the law in effect at the time when that appeal was lodged or the time when that decree was made.

### Paragraphs 7 and 8

Anyone who operates an establishment and has set it up before this Decree takes effect and who does not have a valid nuisance permit under the Bonaire Hindrance Ordinance or the Sint Eustatius Hindrance Ordinance 1993, shall report to the competent authority that the establishment is in operation

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within 12 months after this Decree takes effect. An ample transition period has been included for this purpose so that businesses on the islands that were previously not regulated under the Bonaire Hindrance Ordinance or the Sint Eustatius 1993 Hindrance Ordinance have sufficient time to make the notification under Art. 2.2 of this decree.

If an application for a hindrance permit pursuant to the Bonaire Hindrance Ordinance or the Sint Eustatius Hindrance Ordinance 1993 was submitted before this decree took effect, it is not necessary for these cases to withdraw the application and then submit a notification in accordance with Art. 2.2 of this decree in which the same information must again be provided. Such a permit application is then considered a notification within the meaning of Art. 2.2.

### Article 6.2 Repeal of regulations

The Bgim BES is repealed. The Bgim BES is included in full in this decree. The BES Instruction for BAT Documents for Large Establishments Environmental Management Regulations are based on Art. 11(3) of the BES Bgim. With the repeal of the BES Bgim, the BES Regulation Instruction for BAT Documents for Large Establishments Environmental Management would also expire. This is not desirable. Following instruction 6.8(1) of the Instructions for Regulations, this regulation is represented in principle in this decree.

### Article 6.3 Date of effectiveness

The date this decree takes effect shall be determined by royal decree. This article allows a royal decree to determine for each Public Entity when the entire decree or which articles or parts of the decree shall take effect. The BES Bgim shall be repealed as this decree takes effect. In order to ensure that the Minister of IenW can exercise his authority in all three Public Entities with regard to Type IV establishments, it shall in any case be stipulated by royal decree that the articles of this decree relating to these Type IV establishments take effect immediately for all public entities.

### Annex 1. List of categories of establishments associated with Art. 1.2(1)

This annex designates categories of establishments. The categories tend to consist of several parts. This annex belongs to Art. 1.2(1) of this Decree which is an elaboration of Art. 1.2(3) of the Act.

Order and command that this decree and the accompanying explanatory memorandum shall be published in the Official Gazette.

Secretary of State for Infrastructure and Water Management,  
V.L.W.A. Heijnen