From giving information to imposing obligations

A NEW IMPULSE FOR RESPONSIBLE BUSINESS CONDUCT

Contents

1. Introduction

Reason for evaluating and renewing RBC policy

International trade is the motor that drives the Dutch economy. Trade is a source of prosperity, economic growth and jobs. There is growing consensus that trade must be sustainable and fair to safeguard and increase lasting prosperity, both in the Netherlands and abroad. Besides positive effects, a company's activities can have adverse effects on people and planet. Companies can prevent or mitigate these adverse effects as far as possible by complying with international standards on responsible business conduct (RBC). Policy on RBC encourages companies to abide by these international norms and helps them contribute to the positive effects that business and private enterprise can have in the value chain.

The government understands RBC to mean that companies observe the international standards laid down in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles)[1] and the OECD Guidelines for Multinational Enterprises (OECD Guidelines).[2] In essence, these standards require companies to conduct due diligence. This means they must identify risks in their supply chains, such as labour exploitation and environmental damage. Furthermore, they are expected to remove, prevent or mitigate any risks and report on their efforts.

The Netherlands endorses these international standards and is therefore obliged to have an RBC policy that encourages companies to comply with the standards and respect human rights. Since 2013, voluntary measures have formed the backbone of Dutch RBC policy, which has mainly focused on companies in high-risk sectors and big companies.[3] The policy comprises two key components: encouraging sector-wide cooperation by means of voluntary RBC agreements and encouraging nearly all big companies in the Netherlands to endorse the OECD Guidelines as a reference framework for their international activities.

In its coalition agreement 'Confidence in the Future', the government stated: 'Work on voluntary agreements on international corporate social responsibility will be continued. After two years, the government will consider whether to adopt binding obligations and, if so, what the nature of such obligations should be.'[4] The Minister for Foreign Trade and Development Cooperation (BHOS) therefore launched the 'RBC Measures in Perspective' project to evaluate RBC policy, assess whether it needs to be renewed or supplemented, and explore what – binding – measures could be taken.

Content of this report

Chapter 2 examines the goal of RBC policy and its wider context. Chapter 3 deals with the evaluation of current policy. Chapter 4 summarises the options for and recommendations on updating the policy, based on a series of studies and stakeholder consultations. This leads in chapter 5 to a description of the main elements of a new policy. The new policy should comprise a mix of

[1] https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
[2] https://www.oecd.org/corporate/mne/.
[3] High-risk sectors as identified in a KPMG study are : construction, chemicals, retail, electronics, energy, finance, wholesale, wood & paper, agriculture & horticulture, metal, oil and gas, textiles & clothing, and food &beverage. The government defines big companies as companies with 500 or more employees and a net turnover of more than €40 million or total assets of more than €20 million.
[4] https://www.government.nl/documents/publications/2017/10/10/coalition-agreement-confidence-in-the-future.

measures, of which the adoption of general due diligence legislation at EU level is a key aspect. Finally, approaches to monitoring and evaluation are discussed in chapter 6.

2. RBC policy: goal and context

The goal of policy on responsible business conduct is to spur companies into taking responsibility for ceasing, preventing or mitigating any adverse effects resulting from their activities, products or services. RBC policy is part of a wider government approach to make international value chains sustainable and achieve the UN Sustainable Development Goals (SDGs).

Goal of RBC policy

The UN Guiding Principles have three pillars. Pillar 1 is the state's duty to protect against human rights abuses by third parties, including companies. Pillar 2 concerns the corporate responsibility to respect human rights. Under pillar 3, states and companies have a shared responsibility to ensure victims have access to remedy when human rights are abused.

RBC policy is one of the ways in which the government fulfils its obligations under pillar 1. This policy comprises instruments to encourage and help companies to fulfil their responsibilities under pillars 2 and 3. Companies do this by conducting due diligence, the key principle of both the UN Guiding Principles and the OECD Guidelines. Due diligence means companies must cease, prevent or mitigate any adverse effects on people and planet resulting from their activities, products and services. Where necessary they must take remedial measures or cooperate in their implementation. Ceasing, preventing and mitigating adverse effects and providing access to remedy can make a significant, positive contribution to inclusive, sustainable production and consumption.

RBC policy aims to 1) increase awareness and knowledge of RBC principles and risks, 2) strengthen commitment to the principles (including in reporting), and 3) ensure RBC principles are integrated into Dutch companies' corporate strategies. The main elements of current policy are:

- sector-wide cooperation based on voluntary RBC agreements between companies, civil society organisations and the government, setting out arrangements to achieve compliance with the UN Guiding Principles and OECD Guidelines;
- activities aimed at achieving the government's 90% objective (by 2023 90% of big companies in the Netherlands should endorse the OECD Guidelines as a frame of reference for their international activities);
- RBC conditions tied to public contract awards and support via private sector instruments;[5]
- financial incentives in the form of grants from the Fund Against Child Labour (FBK) and the Fund for Responsible Business (FVO);
- lobbying for an integrated European strategy on RBC, in part through the development of an EU action plan;
- incorporating the EU Non-Financial Reporting Directive into national legislation. This Directive requires large public-interest entities (including listed companies, banks and insurers) to report

[5] Private sector instruments are programmes that encourage Dutch and foreign companies to contribute to private sector development in developing countries.

on sustainability performance concerning, for example, the environment, employees, social aspects and human rights;
- information and mediation provided by the National Contact Point for the OECD Guidelines (NCP).

RBC policy in context

RBC policy is part of wider government policy dedicated to making international value chains more sustainable and contributing to the achievement of the Sustainable Development Goals (SDGs). In its advisory report on the relationship between RBC and the SDGs, the Social and Economic Council (SER) explained that responsible business conduct is the starting point for companies making an effective, efficient and coherent contribution to the SDGs.[6] RBC policy contributes directly to responsible consumption and production (SDG 12) and helps achieve SDGs 5 (gender equality), 8 (decent work and economic growth), 13 (climate action), 14 (life below water), 15 (life on land) and 17 (partnerships for the goals) by preventing or mitigating abuses.

Comprehensive policy aimed at creating sustainable supply chains is far wider than responsible business conduct. It also comprises sustainable trade (e.g. promoting the inclusion of sustainability chapters in trade agreements), sustainable production (e.g. improving local conditions and environments), strengthening regulation and enforcement in producer countries (e.g. with regard to labour rights), and cooperation at EU and international levels to increase the combined impact and level the playing field. In line with the scope of the undertaking given in the coalition agreement, this policy document relates solely to the RBC policy.[7]

[6] Social and Economic Council (October 2019), Seizing Opportunities and Managing Risks – The Relationship between the SDGs and ICSR, p. 21.
[7] The government is currently also working on a revision of the National Action Plan on Human Rights (NAP). RBC policy is one component of the NAP, which also contains other measures to fulfil the government's obligations under pillars 1 and 3 of the UN Guiding Principles.

3. Evaluation of current RBC policy

Evaluations and studies have found that although current RBC policy contains valuable elements to advance RBC, it has failed to achieve its goal (that Dutch companies engage in responsible business conduct in line with international standards). Additional, more rigorous RBC measures are necessary to that end.

Sector-wide cooperation in voluntary RBC agreements

Voluntary RBC agreements are arrangements between companies, public authorities, trade unions and civil society organisations on how participating companies will exercise their responsibility internationally. These have been an important part of Dutch RBC policy since 2013. The agreements relate to the implementation of RBC principles in high-risk sectors and so make improvements in the value chain. A well-functioning agreement can serve as an example for other sectors. There are 10 RBC agreements in total.[8]

The voluntary agreements approach has added value, as shown by an evaluation by the Royal Tropical Institute (KIT)[9] and the advisory report of the SER's RBC committee on futureproof policy for international RBC.[10] Voluntary agreements are an effective means to increase awareness of due diligence and put in place a monitoring infrastructure that facilitates compliance. Voluntary agreements are instrumental to accumulating knowledge (permanent learning process), sharing knowledge (best practices and tools), strengthening cooperation in the due diligence process, increasing influence over suppliers and customers in the value chain, and promoting constructive dialogue with stakeholders. KIT found that sectors with an RBC agreement had made more progress in terms of responsible business conduct than those without.[11]

However, KIT also calculated[12] that RBC agreements have reached only 1.6% of companies in high-risk sectors.[13] This is a very small percentage, although there are significant differences in the market shares of the companies concerned. Similarly, the independent Policy and Operations Evaluation Department (IOB) of the Ministry of Foreign Affairs concluded that, while voluntary RBC agreements might be reaching some Dutch companies in high-risk sectors, they were inadequate in reaching all companies and sectors with a high risk profile.[14]

[8] Garments & textile, banking (ended), gold, natural stone, food, insurance, pension funds, metal, ornamental plants, sustainable forest management. There had also been an agreement on plant-based proteins, but the parties to that agreement jointly decided to terminate it in March 2019. The agreement on coal was a precursor to the RBC agreements and has since ended.
[9] Royal Tropical Institute (8 July 2020), Evaluation of the Dutch RBC Agreements 2014-2020, pp. 10-11.
[10] Social and Economic Council (September 2020), 'Samen naar duurzame ketenimpact. Toekomstbestendig beleid voor internationaal MVO' (Advisory report on future international RBC policy), p. 15.
[11] Royal Tropical Institute (8 July 2020), ibid., p. 7.
[12] Royal Tropical Institute (8 July 2020), ibid., p. 8.
[13] Construction, Chemicals, Retail, Energy, Finance, Wholesale, Wood & Paper, Agriculture & Horticulture, Metal/Electronics, Oil & Gas, Garments and Textile, Food & Beverage.
[14] IOB, Ministry of Foreign Affairs (September 2019), 'Mind the Governance Gap, Map the Chain', p. 15.

The IOB and KIT evaluations show that the longest running agreements – garments & textile and banking – have made a particularly important contribution to the implementation of due diligence by the companies concerned, especially with regard to the first steps in the due diligence process.[15] These agreements create a basis for the sectors to make further progress on addressing the risks in their supply chains.[16]

KIT concluded that it could not definitively establish whether voluntary RBC agreements improved conditions in producer countries (positive impact on the supply chain). This is partly because it is still too early to determine the effects, if any, of a number of RBC agreements that were concluded only recently.[17] Reports on individual agreements also provide no information on the instrument's impact.

KIT, SER and the IOB have made several valuable recommendations to improve sector-wide cooperation in RBC agreements:

- improve monitoring of and reporting on due diligence and the collective impact achieved by parties to an RBC agreement, and enhance internal transparency on the parties' progress. Also, monitor the market share of companies that are party to these agreements and to other sectoral initiatives;
- set clear minimum standards for new RBC agreements, ensuring in any event that they are in line with the UN Guiding Principles, OECD Guidelines, OECD Due Diligence Guidance for Responsible Business Conduct[18] and the SER advisory report on RBC agreements;[19]
- provide targeted support for SMEs in RBC agreements;
- improve access to remedy by establishing effective complaints mechanisms in RBC agreements;
- facilitate meaningful collective communication with affected stakeholders;
- place more emphasis on international cooperation and scaling-up;
- improve access to expertise and the efficiency of the roles of the parties to agreements;
- provide stronger incentives for companies to participate in RBC agreements, for instance by creating demand for RBC on the part of buyers;
- develop a communication strategy to draw companies to RBC agreements;
- set a learning agenda for permanent education and improvement.

In summary, the approach certainly has added value but the policy on voluntary agreements reaches too few companies and there is room for improvement regarding sector-wide cooperation. KIT therefore recommended a study be carried out to identify more effective ways to achieve the goals now pursued through voluntary agreements.[20]

[15] Royal Tropical Institute (8 July 2020), op. cit., p. 7. Ministry of Foreign Affairs (September 2019), op. cit., p. 78.
[16] Social and Economic Council (September 2020), *Samen naar duurzame ketenimpact* (Working together for a sustainable impact on the value chain), p. 25.
[17] Royal Tropical Institute (8 July 2020), Evaluation of the Dutch RBC Agreements 2014-2020, p. 7.
[18] https://www.oesorichtlijnen.nl/documenten/publicatie/2019/06/06/oeso-due-diligence-handreiking-voor-mvo-nls.
[19] Social and Economic Council (April 2014), RBC Agreements.
[20] Royal Tropical Institute (8 July 2020), op. cit., p. 16.

The 90% objective

In 2013, the government set itself the ambitious objective that 90% of the approximately 700[21] big companies in the Netherlands would endorse the OECD Guidelines and the UN Guiding Principles and adopt them as a reference framework for their international activities by 2023. In a baseline measurement over the 2017 reporting year, 30% of these companies were found to have already done so.[22] Companies were then actively called on to endorse the international norms voluntarily. A follow-up measurement, over the 2019 reporting year, found that 35% of big companies had done so. There were differences per sector; one high-risk sector (banking & insurance) had made good progress with 68% endorsement but other high-risk sectors were lagging behind, in many cases with less than 30% of companies endorsing international RBC standards.[23] Only 12 companies applied all six steps of due diligence.[24]

Although there has been a slight increase in the number of companies endorsing the OECD Guidelines, it is unlikely that the target will be reached by 2023.

Government's conditions regarding RBC

Making a public contract award or support from private sector instruments conditional on RBC underscores the importance of RBC to companies that want to do business with the government or receive government support.

Since 2019, endorsement of and compliance with the OECD Guidelines have been a hard requirement for companies applying for a grant or private sector support under the foreign trade and development budget.[25] The IOB concluded that the government's strategy of developing RBC frameworks for all private sector instruments has proved effective. In line with earlier calls by parliament and civil society organisations for such a framework, the IOB recommended that a general RBC framework be developed for all central government's international private sector instruments.[26]

The government's higher ambitions are reflected in central government policy on sustainable public procurement (SPP).[27] The evaluation of the SPP Action Plan 2015-2020, which aims for public bodies to engage in responsible procurement efficiently and effectively, found that public bodies have taken great strides in terms of SPP since 2015. SPP criteria are, for instance, being applied more often and more rigorously in public procurement procedures. Nevertheless, several evaluations criticise the implementation of SRP and conclude that there is scope for a considerable boost in impact.

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[21] Companies with 5,000 or more employees and a net turnover of more than €40 million or total assets of more than €20 million.
[22] Annual report on foreign trade and development cooperation 2018, p. 122.
[23] Ernst & Young (April 2020), *Tussenmeting 90-procent doelstelling* (Interim measurement of the 90% objective), p. 10.
[24] Ernst & Young (April 2020), op. cit., p. 14. The steps are 1) integrate responsible business conduct into policies and management systems, 2) identify and assess adverse effects of own activities and in supply chains and business relations, 3) remove, prevent or mitigate these adverse effects, 4) monitor practical application and results, 5) communicate how effects are addressed, and 6) take or cooperate with remedial measures when appropriate.
[25] Parliamentary Paper 34952, no. 44.
[26] Ministry of Foreign Affairs (September 2019), op. cit., p. 97.
[27] Ministry of Foreign Affairs (September 2019), ibid., p. 115.

Through sustainable and responsible public procurement, the government encourages sustainability ambitions and creates incentives for sustainable innovations. However, there is still a long way to go before companies substantially change how they do business.[28]

Central government's procurement policy is structurally embedded in a purchasing strategy known as 'Procurement with Impact'.[29] This strategy pursues sustainable, social and innovative procurement. It steers central government procurement and sets out goals and frameworks for commissioning and procurement. All government purchases in 45 product groups, for instance, must meet sustainability requirements and at least 50% of these purchases must satisfy the highest sustainability conditions. Specifically with regard to the theme of international social conditions (ISC), central government procurement policy requires all contracts awarded under EU tendering procedures in 10 risk categories to include a contractual condition that service providers have a due diligence obligation regarding social risks in the value chain. In consequence, suppliers must carry out a risk analysis, draw up an action plan to prevent or mitigate the adverse effects of their international activities on human rights and labour conditions, and subsequently publish reports on the impact of their approach. A study into the use of this compulsory ISC framework for central government procurement showed that compliance with ISC contract conditions was inadequate and recommended that monitoring should be improved.[30] The IOB suggests, moreover, that ISC can be extended to other risk categories.

In its evaluation of the Sustainable Public Procurement (SPP) Action Plan 2015-2020, CE Delft concluded that translating ambition into concrete implementation often left a lot to be desired. One of the challenges identified was sub-optimal contract management at many organisations, including inadequate monitoring of compliance with contractual conditions. Only 13% of the organisations evaluated said they applied RPP in contract management in more than half of cases.[31] A stakeholder analysis by Schuttelaar & Partners (2020) found that the use of RPP often depended on individual actors (a manager or buyer); it is not structurally embedded.[32]

In summary, the added value of making RBC a condition for support from private sector instruments and for public procurement contracts is not in question, but there is scope for better implementing this approach. Ambitions have been stated, but are not yet universally followed up.

The Non-Financial Reporting Directive (NFRD)

Since 2013, the Dutch Authority for the Financial Markets (AFM) has encouraged companies to report non-financial information voluntarily in their annual reports. The EU adopted a directive on the disclosure of non-financial information in 2014 that the Netherlands transposed into the Disclosure of Non-financial Information Decree. Under this decree, large public-interest entities[33] have to disclose relevant information in their annual reports as from the 2017 financial year on

[28] CE Delft (April 2020), Evaluation of the SRP Action Plan MVI 2015-2020.
[29] Parliamentary Paper 30 196, no. 679.
[30] Sustainalize (February 2020), 'Verkenning Effectmeting Internationale Sociale Voorwaarden (ISV)' (Review of impact measurement of international social conditions (ISC)), p. 14.
[31]CE Delft (April 2020), 'Evaluatie Plan van Aanpak MVI 2015-2020' (Evaluation of the RPP Action Plan 2015-2020), p. 17.
[32] Schuttelaar & Partners (2020), 'Stakeholderanalyse Maatschappelijk Verantwoord Inkopen' (RPP stakeholder analysis).
[33] Public-interest entities in any event include large listed companies, for which the directive defines a threshold of 500 employees, total assets of €20 million and a turnover of €40 million.

aspects relating to sustainability and the environment, employees, social aspects, human rights and the avoidance of bribery and extortion. The decree provides a legal basis for the transparency expected of companies in accordance with RBC standards.

A study by the AFM of the 89 companies subject to the decree found that, in their reporting, the overwhelming majority of organisations provide information on their policies on various non-financial issues. They fell short, however, in taking this policy forward: identifying risks, using key performance indicators and measuring the impact on RBC. Aspects relating to employees and the environment were reported on most frequently; human rights, anticorruption and bribery the least.[34]

Impact of current measures is inadequate

In summary, the evaluation of RBC policy shows that the current combination of RBC measures will not achieve the goal that Dutch companies' business conduct should be in line with international standards for responsible business conduct. This is also confirmed by the business community itself. A survey of 123 companies by The Terrace (supplemented with group discussions) found that nearly 35% of the companies applied the OECD Guidelines and the UN Guiding Principles. Where 50% and 40% of big companies applied the OECD Guidelines and the UN Guiding Principles respectively, fewer than 30% of small companies did.[35]

Additional and more rigorous RBC measures are required, as the SER also concluded in its advisory report to the government.[36] The effects of the Disclosure of Non-financial Information Decree strengthen the case for binding rules in order to promote aspects of responsible business conduct. The SER recommended developing new policy while at the same time optimising the current policy instruments in order to increase policy coherence, safeguard continuity and continue work on the positive impact of companies in their value chains.[37]

[34] AFM (December 2018), *In balans* (Equilibrium), p. 10.
[35] The Terrace (4 November 2019), *Onderzoek Visie Bedrijfsleven* (Study into companies' views), p. 15.
[36] Social and Economic Council (September 2020), op. cit., p. 19.
[37] Social and Economic Council (September 2020). ibid., p. 19.

4. Study of effective RBC policy and the international environment

Voluntary measures alone are inadequate. A smart mix of measures is necessary to achieve the RBC policy goal, comprising information, facilitation, incentives, conditions and obligations. A policy mix at EU level is preferred and would align with the current EU ambitions.

A smart policy mix

The UN Guiding Principles posit that states should deploy a smart mix of national and international, binding and non-binding measures to promote corporate respect for human rights. In tandem with the evaluation of current RBC policy, the government therefore commissioned studies of and advisory opinions on the possible elements of a smart mix.[38]

Andersson Elffers Felix (AEF) consultancy presented several arguments in favour of a policy mix consisting of several instruments that could, for instance, be introduced successively. Legislation could be announced at the same time as a grant scheme is introduced to promote the required behaviour. A combination of instruments could also be used to reach a heterogeneous target group and so set a process in motion within that group. A policy mix would also be much more effective than the use of a single measure because the right combination of policy instruments could reinforce their individual effects.[39]

AEF concluded that governments use five different strategies: imposing obligations, setting the right conditions, incentivising, facilitating and informing, in line with the 'five Vs' model (in Dutch: Verplichten, Voorwaarden, Verleiden, Vergemakkelijken and Voorlichten, the 5Vs). In view of the heterogeneous target group of RBC policy, AEF recommended that policy instruments be tailored to the various subgroups, taking account of their conduct and knowledge and of the economic impact of the policy instrument.[40] AEF distinguished three groups based on companies' 'RBC maturity':

- laggards are companies without an RBC policy in line with the OECD Guidelines. They have fewer incentives to draw up and implement such policy. The most effective measures to reach this group would be imposing obligations and giving information;
- the peloton or main field, to continue the cycling metaphor, consists of companies that respond to external prompting from investors, customers or government to change their policies and conduct. Some will already have an RBC policy in line with the OECD Guidelines. The most effective measures to reach this target group are imposing obligations, as well as setting conditions, incentivising, facilitating and informing;
- companies in the leading group are actively implementing an RBC policy plan, and constantly test and hone it in practice. Incentives and facilitation are the most effective measures for reaching this target group.

[38] Annexe 3 presents a selection of studies and consultations.
[39] Andersson Elffers Felix (24 March 2020), 'Dwingende en vrijwillige ICSR-maatregelen: onderzoek naar een optimale verhouding' (Binding and voluntary ICSR measures: a study of an optimal relationship), pp. 23-24.
[40] Andersson Elffers Felix (24 March 2020), ibid., p. 21.

A study on RBC measures from companies' perspective by The Terrace consultancy ('IMVO-maatregelen in bedrijfsperspectief') endorsed the AEF's conclusions: a mix of instruments is needed to prompt the diverse group of companies in the Netherlands to engage in or step up RBC activities. The conduct of different types of companies is influenced by different types of instruments.[41] The Terrace therefore recommended that the government develop a smart mix of measures. The IOB also concluded in its 2019 evaluation of RBC policy that regulatory and non-regulatory initiatives complement each other and that a smart mix with positive and negative incentives (carrots and sticks) should be developed to reach the companies in the leading group, as well as the laggards and the peloton.[42] Finally, the SER's RBC Committee stated that a policy mix should comprise national, international, binding and non-binding measures.[43] The SER endorsed the AEF's 5Vs model but added Connecting and Increasing influence ('Verbinden' and 'Vergroten van invloed') to the mix.[44]

Selecting a smart mix

The studies and consultations contain several specific recommendations on the types of instruments that should be included in a smart mix. They can be categorised under AEF's 5V model (imposing obligations, setting conditions, incentivising, facilitating and informing) as follows.

1. Imposing obligations

- Several studies advocated imposing obligations. The absence of a stick in the form of a binding regulation feeds a spirit of 'anything goes' at national level[45] that delays the achievement of the goals. Without obligatory instruments, voluntary agreements have only limited impact. They should therefore be supplemented with binding instruments.[46] The companies that took part in The Terrace's survey believed a legal due diligence and transparency obligation would have significant influence on corporate conduct.[47] A legal obligation to exercise due diligence is expected to be effective in defining a minimum standard for RBC.[48] The effect of this would mainly be to spur laggards into action, especially in sectors that have so far taken too few initiatives. Binding measures such as a due diligence obligation would also prompt companies to raise the bar with respect to RBC.[49] The SER, too, pointed to the absence of a stick (obligation) to prompt companies to implement the OECD Guidelines.[50] The Dutch Advisory Board on Regulatory Burden (ATR) advised to include obligations in a policy mix only if it is clear that self-regulation is inadequate and binding measures have proven effective.[51]
- A legal obligation on responsible business conduct in international value chains can take various forms.[52] The most common are a transparency obligation (which requires companies to report on their RBC policies and their implementation) and binding due diligence legislation. The latter

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[41] The Terrace (4 November 2019), op. cit., p. 6.
[42] Ministry of Foreign Affairs (September 2019), op. cit., p. 197.
[43] Social and Economic Council (September 2020), op. cit., p. 25.
[44] Social and Economic Council (September 2020), ibid., p. 18.
[45] Andersson Elffers Felix (24 March 2020), op. cit., p. 6.
[46] Andersson Elffers Felix (24 March 2020), ibid., p. 79.
[47] The Terrace (4 November 2019), op. cit., p. 6.
[48] The Terrace (4 November 2019), ibid., p. 25.
[49] The Terrace (4 November 2019), ibid., p. 24.
[50] Social and Economic Council (September 2020), op. cit., p. 22.
[51] Dutch Advisory Board on Regulatory Burden (27 August 2020), 'Internationaal Maatschappelijk Verantwoord Ondernemen' (Responsible Business Conduct), p. 7.
[52] Erasmus University identifies 18 options.

can have a broad scope, targeting all the themes in the OECD Guidelines, or be risk-specific. An example of the latter is the Child Labour (Duty of Care) Act, which requires due diligence with regard to child labour in the value chain. Due diligence legislation can also be introduced for one or more specific sectors.

- Transparency legislation can increase understanding of supply chains and risks and increase a company's awareness of and the priority it gives to RBC.[53] Behaviour change is more likely, however, through due diligence legislation that requires companies to know their supply chains and to identify and address risks. Legislation that only lays down reporting requirements without supplementary obligations would produce a paper reality and only increase the regulatory burden for small companies.[54] Policy must not lead to box-ticking but to effective implementation of due diligence.[55]
- A study by the European Commission found that 44% of companies surveyed preferred crosscutting legislation to sector-specific legislation (25%). Civil society organisations expressed an even stronger preference: 68% preferred crosscutting due diligence legislation, which should however also address sector-specific challenges.[56] The ATR, too, said measures should be designed to take account of sectoral differences.[57] The IOB recommended that the government avoid a segmented approach that addresses only one RBC risk at a time. This could lead to a multitude of measures to address a multitude of risks, resulting in inconsistencies and high administrative costs for companies, and would not promote a level playing field.[58] The SER endorsed this analysis and stated that general due diligence legislation would be more in line with the OECD Guidelines. The SER also pointed to the risk of tunnel vision: box-ticking for a particular theme or risk without thought for other risks.[59] According to researchers at Erasmus University, broad legislation has the additional advantage of covering the entire scope of the OECD Guidelines.[60]

- If binding measures have an international reach, as is widely recommended, multinational companies would not be unnecessarily burdened and the playing field would be more level.[61] The EU is seen as the primary partner in this regard. Stakeholders stress the importance of EU leadership. An EU standard could increase harmonisation, legal certainty, a level playing field and have more influence on business relations.[62] This sentiment was particularly strong in the stakeholder consultations[63] and was extensively considered in the advisory report issued by the SER's RBC Committee.[64] The ATR noted that the legislative level also influences companies' perception of the regulatory burden; if their position deteriorates against that of national or

[53] The Terrace (4 November 2019), op. cit., p. 36.
[54] Erasmus University Rotterdam (2020), 'Opties voor afdwingbare IMVO-instrumenten' (Options for Enforceable IRBC Instruments), p. 16.
[55] Social and Economic Council (September 2020), op. cit., p. 20.
[56] European Commission (2020), Study on Due Diligence Requirements through the Supply Chain, pp. 122-123.
[57] Dutch Advisory Board on Regulatory Burden (27 August 2020), op. cit., p. 11.
[58] Ministry of Foreign Affairs (September 2019), op. cit.
[59] Social and Economic Council (September 2020), op. cit., p. 21.
[60] Erasmus University Rotterdam (2020), op. cit., p. 37.
[61] The Terrace (4 November 2019), op. cit., p. 6.
[62] European Commission (2020), op. cit., p. 17.
[63] Industry roundtable of 26 May and NGO roundtable of 20 May, see annexe 3 for a detailed list of studies and consultations.
[64] Social and Economic Council (September 2020), op. cit., p. 24.

international competitors that are not subject to a particular measure, that measure is perceived to be disproportional. This could be remedied if legislation were scaled up to EU level.[65]

- The SER also expected that general due diligence legislation as part of a smart mix of measures at EU level would have the greatest impact. It pointed to the interaction between EU and national due diligence legislation and between EU and national policy space. As the basis for EU legislation is the functioning of the single market, opportunities to pursue national policy are limited. The SER also noted that an EU approach can be time-consuming and that action is needed to safeguard the Netherlands' ambitions. Mindful of these potential disadvantages, the SER outlined three routes towards EU legislation. In the first route, the Netherlands mounts a major lobbying effort in the EU. In the second route, the Netherlands mounts a major lobbying effort in the EU and the incoming government evaluates progress in 2021. The third route is to influence developments at EU level while simultaneously developing national legislation.[66] The ATR, by contrast, warned against developing national measures before EU policy on RBC has taken shape.[67]
- In all cases, legislation must be proportional if it is to be effective: the cost of the regulatory burden to companies must bear relation to the extent to which the stated goals are achieved.[68]
- This is why several studies and advisory reports emphasised the importance of having a clearly defined target group, with particular attention being paid to SMEs as their due diligence capacity is limited.[69] It is also recommended that binding measures should clearly explain what is expected of companies and that monitoring is organised correctly.[70]

2. Setting conditions:

- The SER also recommended that the government pursue policy coherence and responsible public procurement more rigorously.[71] This recommendation is supported by studies that show companies think the government should set a good example by setting RBC criteria for public procurement.[72] In its advisory report 'Seizing Opportunities and Managing Risks – The Relationship between SDGs and IRBC', the SER called for harmonised frameworks for services and financial instruments to support companies in the Netherlands and abroad.[73]

3. Offering incentives:

- It cannot be assumed that the peloton and laggards in a particular sector will automatically adopt the leading group's best practices. They need to be incentivised by means of grants and

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65 Dutch Advisory Board on Regulatory Burden (27 August 2020), op. cit., p 1.
66 Social and Economic Council (September 2020), op. cit., pp. 38-39.
67 Dutch Advisory Board on Regulatory Burden (27 August 2020), op. cit., p. 7.
68 Dutch Advisory Board on Regulatory Burden (27 August 2020), ibid., p. 1.
69 The Terrace (4 November 2019), op. cit., p. 6; Royal Tropical Institute (8 July 2020), op. cit., p. 17; Advisory Board on Regulatory Burden (27 August 2020), op. cit., pp. 9-10; Social and Economic Council (September 2020) op. cit., p 39.
70 Andersson Elffers Felix (24 March 2020), op. cit.; Change in Context (June 2019), Strategies for Responsible Business Conduct: Supplementary Research on Specific Government Measures, p. 3.
71 Social and Economic Council (September 2020), op. cit., p 19.
72 The Terrace (4 November 2019), op. cit., p.
73 Social and Economic Council (October 2019), op. cit., p. 25.

other financial instruments.[74] The recommendation to use incentives and set up a system with both carrots and sticks (such as taxes and grants) is widely shared.[75]

4. Facilitating:

- The evaluation of voluntary RBC agreements (see chapter 3) also found that sector-wide cooperation is held in high regard. A wide-ranging group of companies saw it as an appropriate instrument to bring about behavioural change.[76] It is recommended that sector-wide cooperation be extended to more sectors, with a focus on risk sectors. In this context, the SER recommended that the government develop a vision on sector-wide cooperation in the future based on the lessons learned from evaluations of voluntary agreements.[77]
- A combination of information and facilitation works well. It leads to voluntary behavioural change, especially among companies in the leading group.[78]

5. Information:

- The more complex incentives or obligations are, the more information must be given to the target group about the grants, the conditions to be met and the implications of new legislation.[79]

The government regards connecting and influencing – the elements that SER proposed adding to the 5V model – principally as aspects of facilitation. Instruments that facilitate RBC, such as sector-wide cooperation, help companies connect with and influence each other. The government agrees with the SER's observation that sector-wide cooperation in the form of voluntary RBC agreements touches on several of the Vs.[80] In developing and implementing voluntary RBC agreements, for instance, a great deal of information is shared, both through the joint gathering of information on supply chains and/or risks and the exchange of knowledge and experiences.

Conclusion on the policy mix

The studies and consultations show that a policy mix is preferable to a single instrument because a policy mix will do greater justice to the heterogeneity of the target group. The studies also show that voluntary measures alone are unable to ensure adequate progress in RBC across the entire spectrum of companies. The studies frequently recommend that the policy mix should be extended to include binding instruments. This would set a minimum standard on what is expected of companies, which would improve the performance of laggards in terms of RBC. Legislation that requires companies to conduct due diligence in line with the OECD Guidelines and UN Guiding Principles is thought to be more effective than legislation that would only require companies to report on due diligence (transparency legislation). General EU legislation that covers all the themes in the OECD Guidelines is preferable to legislation addressing a particular theme, as it would be in line with the broad scope of the OECD Guidelines, contribute to a level playing field and avoid an accumulation of regulations. If binding measures are introduced, however, consideration should be given to the regulatory burden

[74] Andersson Elffers Felix (24 March 2020), op. cit., p 6.
[75] The Terrace (4 November 2019), op. cit.; Social and Economic Council (September 2020), op. cit., pp. 19-20.
[76] The Terrace (4 November 2019), op. cit., p 6.
[77] Social and Economic Council (September 2020), op. cit., p 41.
[78] Andersson Elffers Felix (24 March 2020), op. cit., p 6.
[79] Andersson Elffers Felix (24 March 2020), ibid., p 6.
[80] Social and Economic Council (September 2020), op. cit., p. 25.

on companies and the measures' proportionality.[81] With a view to a level playing field as well as to policy effectiveness, regulation at EU level is preferable to a national initiative.

A smart policy mix will work better if everyone understands the policy. Information on the requirements companies must meet is vital, particularly for the laggards and companies in the peloton. According to the analyses, companies in the leading group are motivated by facilitation (and sometimes incentives). They do more than the minimum. The peloton can also be influenced by incentives and facilitation. Useful instruments include support for sector-wide cooperation and the provision of financial incentives, for instance in the form of grants. Sector-wide cooperation can also be established in order to comply with legislation. A combination of information and facilitation can result in genuine behavioural change. For the other non-binding elements of the policy mix, too, an EU approach might be more effective than a national approach.[82]

	Laggards	Peloton	Leading group
Obligations	X	X	
Conditions	X	X	
Incentives		X	X
Facilitation		X	X
Information	X	X	

Developments in the EU and elsewhere

RBC is topical in other countries, too, and ways are being sought to increase policy effectiveness, providing incentives and facilitation for companies to meet RBC standards. There seems to be a trend towards binding measures to promote due diligence. Some countries have introduced thematic or sectoral due diligence legislation for specific RBC themes, such as forced labour and exploitation (including child labour) or for specific sectors (timber, minerals). Examples include the UK Modern Slavery Act (2015), the EU Timber Regulation (2010) and the US Dodd-Frank Act (2010).[83] Recently, we are also seeing the introduction of due diligence legislation with a broad scope that cuts across themes and sectors. France, for instance, introduced such legislation in 2017 and Germany is also considering doing so.[84] Switzerland will hold a referendum on general due diligence legislation at the end of 2020.

At the aggregate level of the EU, too, RBC is in the spotlights and momentum for an EU action plan is growing.[85] A study by the European Commission[86] concluded that current, fragmented policy does not offer companies sufficient legal certainty because due diligence expectations are uncertain. The situation is perceived as inefficient, disjointed and ineffective. In this study 334 companies and 297

[81] In the EU, this must be assessed by the Regulatory Scrutiny Board.
[82] The Terrace (4 November 2019), op. cit., p. 13.
[83] Change in Context (June 2019), op. cit.; Price Waterhouse Coopers (December 2018), 'Strategies for Responsible Business Conduct'.
[84] https://www.auswaertiges-amt.de/en/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-nap/2131054.
[85] On the wider international stage, a binding instrument based on the UN Guiding Principles is being discussed at UN Level.
[86] European Commission (2020), op. cit., p. 16. The same findings were reported in studies by Price Waterhouse Coopers (December 2018), op. cit. and Change in Context (June 2019), op. cit.

other interested parties were asked to give their views on four options for RBC policy, ranging from continuation of the current policy to the introduction of general due diligence legislation. Most respondents preferred the last option.

The EU Commissioner for Justice and Consumer Affairs Didier Reynders announced in April 2020 that he would present a proposal for an initiative (possibly legislative) in the field of sustainable corporate governance that would include due diligence.[87] The proposal is expected in the first quarter of 2021. In the meantime, the European Parliament is drafting a report on due diligence legislation on its own initiative, which it intends to publish in the first quarter of 2021. The intention is for the European Council to take steps under the German Presidency to promote coordinated action on RBC.

[87] https://responsiblebusinessconduct.eu/wp/2020/04/30/speech-by-commissioner-reynders-in-rbc-webinar-on-due-diligence/, EU biodiversity strategy and speech by Commissioner Phil Hogan.

5. Main points of new RBC policy

The government is proposing a smart policy mix with general due diligence legislation, preferably at EU level, at its heart. The building blocks for an EU measure can also be used nationally if an effective and practicable EU proposal fails to get off the ground. The policy mix will be supplemented with measures to promote compliance with legislation and the exercise of due diligence. Specifically, these measures are RBC criteria in public procurement and private sector instruments, a new RBC support office, financial incentives and sector-wide cooperation.

The goal of RBC policy is for companies to conduct their international activities in line with the OECD Guidelines and UN Guiding Principles. In keeping with the OECD Guidelines and UN Guiding Principles, RBC policy applies to all companies. Instruments in the policy mix, however, can target specific groups in the business community. The government has concluded from the evaluation of current RBC policy and studies, consultations and advisory reports on an effective renewal that current RBC policy needs to be supplemented and improved. It wants to introduce a smart policy mix in which a range of measures together lead to effective behavioural change among companies in the leading group, the laggards and companies in the peloton.

Obligations set a minimum standard for laggards to meet

General due diligence legislation

Further to the SER's advisory report and the studies and consultations that preceded it, the government is opting for a smart policy mix with a general due diligence obligation at its heart. This must prompt laggards and companies in the peloton to meet at least the basic RBC requirements. Legislation must be in line with the OECD Guidelines and UN Guiding Principles, and it must require companies to conduct due diligence. Legislation must produce genuine behavioural change; box-ticking must be avoided.

Several studies concluded that a general due diligence obligation would be most effective at EU level: the impact on the supply chain would be greater and the level playing field would be enlarged. The SER endorsed this viewpoint.[88] It observed, moreover, that momentum for an EU approach is growing in the EU. The EU legislative process, however, can be time-consuming and the Netherlands must influence the EU policy process at an early stage if it is to achieve its ambitions. Without expressing a preference, the SER's advisory report described three routes to bring about EU legislation: 1) mount a major lobbying effort in the EU, 2) mount a major lobbying effort in the EU and have the incoming government evaluate progress in 2021 and record this in the coalition agreement, 3) influence the process at EU level and simultaneously develop national legislation.[89] The SER noted that the interaction between EU and national policy space must be taken into

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[88] The SER concludes that a policy mix that includes a due diligence regulation is preferable, particularly if the mix can be anchored at EU level (Social and Economic Council (September 2020), op. cit., p. 36).
[89] Social and Economic Council (September 2020), ibid., p. 6.

account.[90] If it becomes clear that the European Commission is taking definite steps toward a legislative proposal, it must not be hindered by a national legislative procedure. The ATR expressed doubts about the advisability of introducing national measures without knowing what measures will be taken at EU level to promote RBC. It also warned that premature national decision-making could necessitate adjusting national policy to new EU measures, creating an additional and unnecessary regulatory burden for companies.[91]

In light of the results of the studies and consultations, the government will concentrate its efforts primarily on a general due diligence obligation at EU level. The European Commission is currently working on a sustainable corporate governance initiative (possibly legislative) that will incorporate due diligence. The government is confident that the due diligence regulation sought at EU level is promising.

The government understands that attention must be paid to the relationship and potential interference between national and EU policy. By adopting the Child Labour (Duty of Care) Act, the Netherlands has also assumed a responsibility of its own, although relevant issues must still be resolved. Important outstanding issues concern the supervisory authority for and the scope of the Act, which must be addressed with due regard for proportionality and policy effectiveness. Questions of this kind overlap precisely with the building blocks that are needed to put together a general due diligence obligation, regardless of whether it is introduced at EU or national level.

The government is therefore working out these issues in more detail and is focusing primarily on exerting influence on EU policymaking. If a general due diligence obligation is established at EU level, it is to be preferred to the Child Labour (Duty of Care) Act. But if the EU does not arrive at an effective and workable proposal, the necessary building blocks will be at hand to introduce binding measures at national level.

The government takes note of the SER's advice to closely monitor progress on this issue at EU level and suggests taking stock of the state of play at EU level in summer 2021. Both the European Commission's proposal on sustainable corporate governance and the position taken by the European Parliament and the member states are relevant in this regard.

The questions will be worked out with regard to scope and oversight, building on the insights of previous studies and consultations. In doing so, the government will not lose sight of proportionality.[92] In accordance with the ATR's advice, the government will study the regulatory burden arising from legislation that obliges companies to conduct due diligence. Due diligence legislation should add little to the regulatory burden on companies that are already voluntarily applying the OECD Guidelines and UN Guiding Principles. These companies often express their support for due diligence legislation.[93] The findings of the studies by Erasmus University Rotterdam and the Due Diligence and Monitoring Working Group into the options for enforceable RBC instruments provide useful input for fleshing out how supervision can be arranged under such legislation. A particularly interesting concept is dynamic supervision, which encourages companies to constantly improve their performance rather than pointing out their mistakes. Dynamic supervision

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[90] Social and Economic Council (September 2020), ibid., p. 38.
[91] Dutch Advisory Board on Regulatory Burden (27 August 2020), op. cit., p. 11.
[92] Dutch Advisory Board on Regulatory Burden (27 August 2020), ibid., p. 11.
[93] Letter from CSR Netherlands and Both ENDS to the Minister for BHOS (4 May 2020), stakeholder consultation as part of the RBC Measures in Perspective project (May 2020), and lobby letter from 26 companies calling for EU due diligence legislation.

is based in part on existing good practices in the market.[94] This form of supervision is therefore in line with the ATR's recommendation that the reputation mechanism and the 'comply or explain' principle should be applied.[95]

Transparency legislation

Views on the effectiveness of an obligation on companies to report on their due diligence differ. However, legislation is already in place in the form of the EU Non-Financial Reporting Directive (NFRD), which obliges large public-interest entities to report on corruption, human rights, labour and the environment. Under the NFRD, companies are required to report on due diligence if such processes are present. The European Commission will propose a revision of the NFRD in early 2021. During negotiations on the revision, the government will seek to align the revision with existing international frameworks, including the OECD Guidelines and the UN Guiding Principles Reporting Framework and the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) as far as possible. With regard to the introduction of a general due diligence obligation, the government will strive to avoid imposing a double reporting obligation on companies as a result of different regulations in different countries. Further to the European Commission's public consultation on the revision of the NFRD, the government responds affirmatively to the possibility of extending the scope of the NFRD from all public-interest entities to large companies (companies with more than 250 employees, total assets of more than €20 million and a net turnover of more than €40 million).

Government conditions; incentives for laggards and the peloton

Public procurement

The government wants to use its procurement policy to set an example. Setting RBC conditions for public procurement should encourage more companies to adopt RBC norms, especially where there is currently no statutory obligation to conduct due diligence.

The government intends to put the foundations of public procurement in order and commits itself to strengthening contract management with regard to international social conditions (ISC). Suppliers will be required to observe the contractual agreements in all award procedures subject to the central government ISC framework in a timely manner and to carry out a risk analysis, draft an action plan and publish a report in line with the OECD Guidelines and the UN Guiding Principles. The government will monitor compliance and refer to it in the annual report on central government operational management. Obstacles will be analysed and tools for contract managers will be identified. A step can then be taken towards improving the application of ISC.

Furthermore, the government will launch a pilot project to improve the exchange of up-to-date, sector-specific information on the main RBC risks between buyers, contract managers, the sectors concerned and experts. Maximum use will be made of the knowledge generated by sector-wide cooperation.

The central government purchasing system will be redesigned in 2021. It will include a new classification of central-government-wide procurement categories, with fewer categories. The allocation of these categories over the ministries will take more account of their respective policy

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[94] Erasmus University Rotterdam (2020), op. cit., p. 5; Summary Report of the Due Diligence and Monitoring Working Group (2020), p. 5.

[95] Dutch Advisory Board on Regulatory Burden (27 August 2020), op. cit., pp. 7-8.

fields. The new system will be more effective, allowing stricter contract management in regard to ISC. Currently, the ISC framework applies to 10 risk categories. In view of the risks in other categories, an investigation will be carried out into whether the ISC framework should routinely be applied more widely and into the feasibility, desirability and scope of using ISC as an award criterion.

The ambition for other public authorities is that they apply the ISC framework wherever possible and include due diligence in their procurement agreements with companies. Local and regional authorities have autonomy in drafting their procurement policies. Central government encourages them to pursue sustainable public procurement and to include ISC/ due diligence in procurement agreements. The Ministry of Infrastructure and Water Management is leading the development of a new Sustainable Public Procurement Action Plan 2021-2025. One of its principles will be greater commitment to SPP policy.

Private sector instruments

In designing private sector instruments, the government can stipulate that companies receiving government support, such as grants, implement the OECD Guidelines and UN Guiding Principles. Such a condition must prompt more laggards and companies in the peloton to take action.

The Ministry of Foreign Affairs' private sector instruments, implementation of which has been delegated to the Netherlands Enterprise Agency (RVO.nl), were updated with an RBC framework in 2017.[96] This framework remains the blueprint for RBC policy in the ministry's toolbox. A start has since been made on streamlining the RBC framework for existing and new instruments and implementing bodies (for instance FMO (the Dutch development bank), the Ministry of Foreign Affairs' trade missions, Invest International and the embassy network guidelines). In principle, the conditions are not intended to exclude companies but seek improvements and proportionality (in part in relation to the size of a grant and the nature of the RBC risks).[97] In line with the motion submitted by MP Sjoerd Sjoerdsma,[98] the government is seeking to apply the RBC framework across central government. RVO.nl, for instance, is studying how an RBC framework can be applied to the instruments of the Ministry of Economic Affairs and Climate Policy.[99]

Incentives, facilitation and information

By means of incentives, facilitation and information, the government wants to support businesses in conducting themselves responsibly. Support is intended both for companies to which the obligation applies or will apply in the future, and to companies to which it does not. SMEs in particular, it transpired from the consultations, need such support. Companies must be aware of the legislation and what it expects of them. In drafting the legislation, lawmakers must take into account that the legislation will create an administrative burden for companies. The government also wants to make it easier for companies to comply with the legislation. To this end it will establish a new RBC support office that will function as a one-stop shop. The government thus responds to the concerns expressed by the ATR and others about the complexity of policy and the regulatory burden. These measures will also help companies observe the OECD Guidelines during the transition to legislation.

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[96] https://www.rvo.nl/onderwerpen/internationaal-ondernemen/kennis-en-informatie/maatschappelijk-verantwoord-ondernemen-mvo-het-buitenland/uitvoeringsbeleid-mvo.
[97] Parliamentary Paper 26 485, no. 320.
[98] Parliamentary Paper 26 485, no. 171.
[99] Parliamentary Paper 26485, no. 320.

RBC support office

The new RBC support office will play a pivotal role as a one-stop shop for all matters pertaining to RBC policy. It will provide support in conducting due diligence both to companies which are or will be obliged to do so and to companies which are not. The RBC support office will serve laggards, the peloton and the leading group. Besides providing information, it can be tasked with the implementation of other instruments, such as grant programmes (for companies in the peloton and the leading group). The support office can also facilitate sector-wide cooperation, offer tools to companies in the leading group and facilitate knowledge sharing between companies and the embassy network. The RBC support office's tasks could include:

- helping companies implement the OECD Guidelines and the UN Guiding Principles, including providing information and helping companies (directly or through third parties) carry out the steps in the OECD Guidelines;
- offering and providing risk-specific knowledge and expertise, for instance on priority RBC risks (such as freedom of association and the right to collective bargaining, child labour, a living wage and gender) or on RBC risks in particular sectors or geographical regions;
- providing financial support, for instance, for a sectoral approach or through other grant programmes.

The support office is intended to prevent the fragmentation of services and help alleviate the regulatory burden on companies. The concept of a support office as a central helpdesk is new but that is not true of all the measures it can provide assistance with. Knowledge that has been built up in the past by RVO, the SER, the National Contact Point for the OECD Guidelines (NCP), the Sustainable Trade Initiative, CSR Netherlands and others will be accessible through the support office.

Sector-wide cooperation to conduct due diligence

The evaluations, studies and consultations highlight the added value of and need for sector-wide cooperation. Sector-wide cooperation also aligns seamlessly with SDG 17 (Partnerships for the goals) and the OECD Guidelines (which encourage companies to participate in sector-wide, joint initiatives to coordinate policy and risk management systems for supply chains).[100] Support for sector-wide cooperation is expected to help mainly companies in the peloton and the leading group carry out precompetitive and ambitious activities in the field of RBC. Such partnerships, however, can also be sought in order to comply with a due diligence obligation. The government will continue to encourage sectoral initiatives aimed at conducting due diligence in line with the OECD Guidelines and/or at achieving impact on specific themes or supply chains.

The government encourages companies to work with civil society organisations in order to increase their impact on the value chain, partly through connecting with each other and mutually strengthening their influence, and considers stakeholder dialogue to be an important aspect of sector-wide cooperation. The government will continue to be involved in sector-wide cooperation, deciding on a case-by-case basis whether it should become party to an initiative or play a different role to boost policy effectiveness. One consideration will be whether a particular approach's goals and ambition are consistent with the government's policy priorities. The government will remain party to the current voluntary RBC agreements for the term for which they were concluded and will

[100] The OECD Guidelines for Multinational Enterprises, chapter II: General policies.

continue participating in ongoing negotiations. The renewed sectoral approach is also intended for initiatives that follow up on RBC agreements that have already ended.

The government will study the extent to which sectoral initiatives can be accommodated in the current measures, modalities and financing arrangements for sector-wide cooperation and where additional financial or other support is needed, for instance via the RBC support office. By means of financing conditions, the government will set requirements for an initiative and its content, including arrangements with regard to monitoring, transparency and reporting. In principle, a tailored approach for each initiative will be the starting point.

Financial incentives

To complement financial and other support for sector-wide cooperation, the government recently developed other incentives to encourage companies in the leading group and the peloton to implement the OECD Guidelines. SMEs with sustainable, international ambitions can use IMVO vouchers[101] to help pay for consultancy research and advice on making their international supply chains more sustainable. The Fund Against Child Labour (FBK) and the Fund for Responsible Business (FVO) help companies and organisations carry out projects that address supply chain risks in producer countries. The government monitors the effectiveness of these instruments and will carry out a joint mid-term review of the FBK and FVO in 2021. Partly on the basis of the findings of this review, it will then decide whether the instruments should be continued, modified or replaced with other types of incentive.

The smart mix at EU level

The Netherlands has extensively studied the composition of a smart policy mix for RBC. If it was up to the Netherlands, EU legislation would also be augmented with voluntary and supportive measures. The Netherlands will therefore actively share its insights and work at EU level for an EU action plan that helps create a level playing field in the EU with regard to RBC and increases the combined impact of RBC by promoting the implementation of the OECD Guidelines and UN Guiding Principles.

An EU action plan should at least seek a coherent EU policy approach on the role of companies where there are risks in the value chain. It must also encourage companies and governments in producer countries to address supply side risks. It could, for instance, include the use of EU sector-wide cooperation to tackle concrete risks and discuss dilemmas in the conduct of due diligence. A shared vision of a binding UN treaty on business and human rights can also be further developed, including a negotiation mandate and a clear vision of possible measures for access to remedy.

Conclusion: key elements of the new RBC policy

In conclusion, at the heart of the government's proposals is a smart mix of measures that combines obligations, conditions, incentives, facilitation and information. A general due diligence obligation is a key element in the government's proposals. The government will continue to address the relevant issues and apply them primarily at EU level. The RBC support office is new. Its task will be to inform companies about RBC and due diligence and, moreover, help them apply these principles. The RBC support office will support companies which are or will be obliged to do so and companies that do so voluntarily, especially SMEs. Measures that are currently part of the Netherlands' RBC policy will be

[101] https://www.mvonederland.nl/en/international-csr/.

continued, but their effectiveness will be improved in light of the lessons learned from studies and evaluations. These instruments set conditions (regarding public procurement and private sector instruments), provide incentives (financial incentives in the form of grants) and facilitate (support for sector-wide cooperation).

The evaluation and renewal process has provided the government with useful insights into how it can manage and implement a smart mix. The Netherlands will contribute these insights towards the development of an EU action plan, which must include not only EU general due diligence legislation but also other measures.

6. Monitoring and evaluation

The government has developed theory of change to gain insight into progress in and achievement of the RBC policy goals. The measures in the smart mix must promote RBC awareness, knowledge and commitment and anchor RBC principles in Dutch companies. A monitoring and evaluation framework will be drawn up for each measure.

The government recognises the importance of policy monitoring and evaluation, which offer insight into progress on policy implementation and the extent to which goals are being achieved. Policy can then be adjusted if necessary. Measuring policy effectiveness and efficiency is important if policy adjustments are considered. IOB and PWC recommend developing a crosscutting theory of change for Dutch RBC policy, as well as specific policy theories for each measure.[102] Such a policy theory forms the basis for monitoring and evaluation.

Theory of change

As explained in annexe 2, the intended goal of RBC policy (the indirect effect) is that companies engage in responsible business conduct in line with applicable international standards. This must be achieved through direct interventions in three areas:

a. awareness and knowledge of RBC (and RBC risks) among Dutch companies,
b. commitment to RBC principles (including in reports) by Dutch companies,
c. anchoring of RBC principles in the corporate strategies of Dutch companies.

The measures proposed in this report are intended to have direct effect on the following aspects.

a. To increase awareness and knowledge, the government will specifically use the information instrument. The provision of information will be an important task of the new RBC support office. Through knowledge-sharing, sector-wide cooperation must also make a significant contribution to greater knowledge of RBC and RBC risks. Existing EU transparency legislation is expected to contribute in the first instance to RBC awareness and knowledge. By setting RBC conditions for public procurement and private sector instruments, companies will become more familiar with RBC, which will increase RBC awareness and knowledge.
b. Corporate commitment to RBC principles can be stimulated by facilitating their implementation. In particular, the government believes formal agreements made in the framework of sector-wide cooperation will strengthen companies' commitment to RBC principles.
c. A general due diligence obligation will also anchor RBC principles in corporate strategies. Another tactic is setting conditions with regard to RBC; conditions will remain part of the RBC framework for private sector instruments and will be further rolled out in policy on sustainable public procurement. The use of these instruments must strengthen the anchoring of RBC principles among companies that enter into a relationship with the government. The promotion of sector-wide cooperation must also help anchor RBC

[102] Ministry of Foreign Affairs (September 2019), op. cit.; Price Waterhouse Coopers (December 2018), op. cit., pp. 3-4.

principles by facilitating the conduct of due diligence. Finally, financial incentives can persuade companies to conduct due diligence and innovate in the field of RBC. Companies that apply for financial incentives must anchor RBC principles in their corporate strategies.

A policy review is periodically carried out of the budget article under which RBC falls. To this end, an evaluation of RBC policy was completed in 2019. To ensure that the next evaluation can give a satisfactory answer to the question whether the measures taken contribute to the desired outcome and help achieve the intended result, a monitoring and evaluation framework will be developed for each measure (where one is not yet in place) in accordance with the IOB's recommendation.[103] To measure effectiveness, a baseline measurement must be taken.[104] A method will therefore be sought to analyse the current status of the three areas directly targeted by the policy. The information gathered in the completed evaluations and studies could be used in this regard.

Impact measurement

It is assumed that RBC prevents a company's activities from having adverse effects in the value chain with regard to people and planet, or that it enables a company to respond appropriately to mitigate abuse (indirect effect). Mitigating adverse effects should improve conditions for people and planet in their value chains. It should be noted, however, that multiple factors determine conditions in the value chain and that Dutch companies cannot always influence them. This hinders not only the effectiveness of policy but also the ability to measure these effects.

It is difficult to attribute improvements in the value chain to Dutch companies' RBC measures. The PWC study and the Change in Context study,[105] for instance, found that other countries do not have evaluation frameworks to measure impact either. The government encourages thinking in this area and is providing funds for the OECD to develop a methodology that links due diligence in the field of mineral extraction to circumstances in producer countries. The outcomes of this study will be closely followed and used by the IOB in its next evaluation as part of the policy review of the policy article concerned.

[103] Ministry of Foreign Affairs (September 2019), op. cit., p. 196.
[104] Price Waterhouse Coopers (December 2018), op. cit. pp. 3, 4.
[105] Change in Context (June 2019), op. cit.

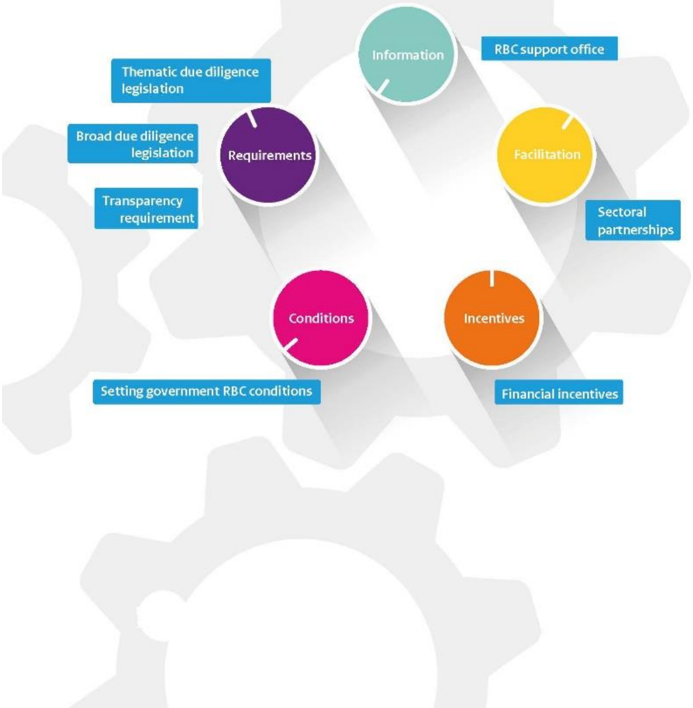
Annexe 1: The smart mixes: general outline

Ministerie van Buitenlandse Zaken

Direction of new policy: RBC measures in perspective

Smart mixes: further elaboration on their main lines

Range of options for RBC measures



Main lines of the smart mixes

1 'Zero option' (continuing current policy + Child Labour (Duty of Care) Act

- 1 Child Labour (Duty of Care) Act
- 4 RBC agreements
- 6 European efforts

2 Thematic due diligence legislation

- 1 Child Labour (Duty of Care) ActWet Zorgplicht kinderarbeid
- 2.1 Setting government RBC conditions: procurement
- 2.2 Setting government RBC conditions: instruments for policy coherence
- 3 Financial incentives
- 4 Sectoral partnerships
- 5 RBC support office
- 6 European efforts

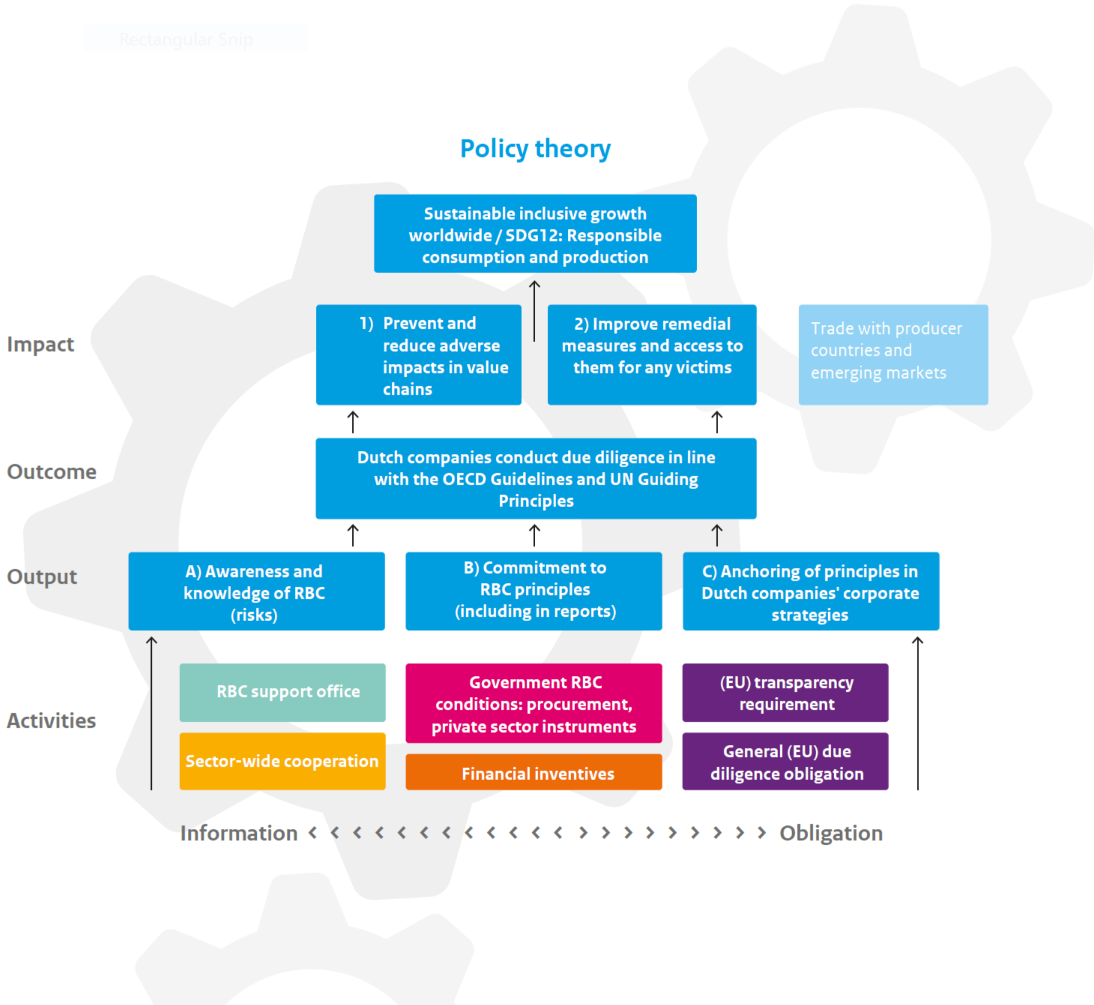
3 Broad due diligence legislation

- 1.1 Broad due diligence legislation
- 1.2 European transparency requirement
- 2.1 Setting government RBC conditions: procurement
- 2.2 Setting government RBC conditions: instruments for policy coherence
- 3 Financial incentives
- 4 Sectoral partnerships
- 5 RBC support office
- 6 European efforts

4 Transparency requirement + thematic due diligence legislation

- 1.2 European transparency requirement
- 1.1 Child Labour (Duty of Care) Act
- 2.1 Setting government RBC conditions: procurement
- 2.2 Setting government RBC conditions: instruments for policy coherence
- 3 Financial incentives
- 4 Sectoral partnerships
- 5 RBC support office
- 6 European efforts

Annexe 2: RBC theory of change



Annexe 3: Studies and consultations

1	***Advisory reports***
Social and Economic Council (18 September 2020), *Samen naar duurzame ketenimpact. Toekomstbestendig beleid voor internationaal MVO* (Working Together on a Sustainable Impact on the Value Chain)	
	Advisory report further to a request for advice from the Minister for Foreign Trade and Development Cooperation on the advantages and disadvantages of various combinations of policy instruments with a view to achieving the RBC policy goals.
Dutch Advisory Board on Regulatory Burden (27 August 2020), *Internationaal Maatschappelijk Verantwoord Ondernemen* (International Responsible Business Conduct)	
	Advisory report further to a request for advice from the Minister for Foreign Trade and Development Cooperation on the regulatory burden created by various RBC instruments.

2	*Studies*
Royal Tropical Institute (8 July 2020), *Evaluation of the Dutch RBC Agreements 2014-2020*	
	Voluntary RBC agreements were evaluated in order to provide insight into the extent to which they promote the conduct of due diligence in high-risk sectors in line with the OECD Guidelines and UN Guiding Principles.
Report of the Due Diligence and Monitoring Working Group (6 July 2020)	
	This report presents the results of the Due Diligence and Monitoring Working Group. The working group's objective was to share understanding of five possible monitoring, supervision or enforcement instruments for the new RBC policy.
Ernst & Young (April 2020), *Tussenmeting 90%-doelstelling* (Interim Measurement of the 90% Objective)	
	Survey into the percentage of big companies in the Netherlands that explicitly endorsed the OECD Guidelines for their international activities in 2019.
Andersson Elffers Felix (4 March 2020), *Dwingende en vrijwillige IMVO-maatregelen: onderzoek naar een optimale verhouding* (Binding and Voluntary RBC Measures: A Study of an Optimal Relationship)	
	Study into the optimum relationship between voluntary and binding RBC policy measures.
Erasmus University Rotterdam, C. van Dam, M.W. Scheltema (March 2020), *Opties voor afdwingbare IRBC-instrumenten* (Options for Binding RBC Instruments)	
	Study of possible ways to transpose the six steps of due diligence into legislation, including enforcement options, in line with the OECD Guidelines.
Nyenrode Business University (15 March 2020), *De rol van de overheid bij de naleving van de OECD Guidelines vanuit markttransformatie perspectief* (The Role of Government in Compliance with the OECD Guidelines from a Market Transformation Perspective)	
	Study of the roles government can play to encourage compliance with the OECD Guidelines.
The Terrace (4 November 2019), *Onderzoek Visie Bedrijfsleven*	
	Survey using questionnaires and meetings to determine the views of companies on effective government instruments to improve companies' compliance with the OECD Guidelines and UN Guiding Principles.
Ministry of Foreign Affairs (September 2019), *IOB Evaluation: Mind the Governance Gap, Map the Chain*	
	Evaluation of Dutch RBC policy between 2012 and 2018 carried out by the Ministry of Foreign Affairs' independent Inspection and Evaluation Department.

Change in Context (June 2019), *Strategies for Responsible Business Conduct: Supplementary Research on Specific Government Measures*	
	Update of the report 'Strategies for Responsible Business Conduct' with recent developments, deepening understanding of how different instruments can be managed.
Price Waterhouse Coopers (December 2018) *Strategies for Responsible Business Conduct*	
	Study of how governments in various countries ensure companies conduct due diligence in line with the OECD Guidelines

3 Consultations

High-level kick-off meeting, RBC measures in perspective (30 October 2019)	
	During the kick-off meeting on 30 October 2019, the Minister of Foreign Affairs informed companies, civil society organisations and government representatives of the reasons for the project, the problem that RBC policy aims to resolve and the goal of RBC policy.
General stakeholder consultation, RBC measures in perspective (19 November 2019)	
	The general stakeholder consultation marked the start of the evaluation and renewal process for RBC policy at expert level. It was attended by 120 representatives of companies, civil society organisations, the government and knowledge institutions. Information was shared through a series of roundtables.
Stakeholder consultation in the context of the study into options for enforceable RBC instruments organised by Erasmus University Rotterdam (18 February 2020)	
	Companies, NGOs and other stakeholders (e.g. supervisors) shared their thoughts and experiences regarding legislative options. The outcomes were included in the study of options for enforceable due diligence legislation.
Focus groups and a survey for a study by The Terrace into the most effective measures, according to the private sector, to encourage RBC (December 2019)	
	On behalf of the ministry, The Terrace organised focus groups with the private sector to gain insight into the impact of various government measures on corporate behaviour. The results were incorporated in the study report, 'RBC measures from a corporate perspective'.
Roundtables with civil society organisations and the private sector (March 2020)	
	The Ministry of Foreign Affairs discussed the progress of the **RBC Measures in Perspective** project with civil society organisations and companies and the advantages and disadvantages of possible RBC measures.
High-level meeting (15 April 2020)	
	Representatives of civil society organisations, the private sector and the government discussed the RBC Measures in Perspective project and the advantages and disadvantages of possible RBC measures. The **report on the high-level meeting** can be read here (in Dutch).
Roundtables with NGOs and the private sector (May 2020)	
	The Ministry of Foreign Affairs informed civil society organisations and companies of the project's progress. The participants also considered what RBC policy proposals would be effective. **The report on the high-level meeting can be read here (in Dutch)**.
Local stakeholder consultations (July 2020)	
	The Ministry of Foreign Affairs consulted local stakeholders last summer about the impact of possible RBC measures on stakeholders in producer countries. The report can be read here.