

Executive summary

The task

The Netherlands endorses the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). These documents lay down international norms on responsible business conduct (RBC). The key principle underlying these norms is that businesses should identify risks in their international supply chains, take action to cease, prevent, or mitigate these risks, and communicate about their efforts in this regard. This is referred to as 'due diligence' and it is concerned with the risk of human rights violations, such as forced labour and exploitation, as well as the risk of environmental damage.

Dutch RBC policy encourages businesses, primarily by means of voluntary measures, to abide by the international norms and respect human rights. Two important components are stimulating sector-wide cooperation by means of voluntary agreements on responsible business conduct (RBC agreements) and fostering endorsement of the OECD Guidelines by practically all large multinationals in the Netherlands as a frame of reference for their international activities (known as the '90% objective').

In its coalition agreement 'Confidence in the Future' the government agreed the following with regard to RBC: '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.' The Minister for Foreign Trade and Development Cooperation has therefore evaluated Dutch RBC policy, assessed whether it needs to be updated, and explored what – binding – measures could be taken.

Current context – COVID-19

The global COVID-19 pandemic has had enormous repercussions. First and foremost a public health crisis, it has also had major economic consequences, not only in the Netherlands, but also in the countries with which the Netherlands trades. The crisis is having a direct impact on employees: many are having to work in unsafe conditions or face the threat of redundancy.

This underlines the importance of responsible business conduct, such as developing and observing occupational health and safety standards and addressing the situation of workers affected by the crisis. Looking beyond the crisis, responsible business conduct is crucial in the long term too. It ensures that the positive effects of business activity, such as employment, remain, while the negative effects are avoided. In this way RBC makes a substantial contribution to the achievement of the United Nations' Sustainable Development Goals (SDGs). It is essential for society's sustainable recovery and progress towards better working conditions around the world and a lighter burden on the environment and climate.

New RBC policy

In spite of the many positive steps taken by many businesses, evaluations show that current RBC policy is not effective enough. There are still too few Dutch companies that do business in

accordance with RBC norms. Existing measures therefore need to be supplemented and tightened up.

Insights drawn from studies and from stakeholder consultations on the options for new policy indicate that a mix of measures is required because this is the only way to engage effectively with a heterogeneous target group. Four possible mixes have been assessed.¹ Advisory opinions on these four variants were sought from the Social and Economic Council (SER) and the Dutch Advisory Board on Regulatory Burden (ATR). The SER concludes that an ambitious EU policy mix, including wide-ranging legislation concerning a general due diligence obligation and sector-wide cooperation to extend influence and share lessons learned, provides the best chance of taking RBC forward and establishing sustainable supply chains. The SER notes that momentum has gathered in the EU for an approach along these lines, but also cautions that a European approach could be time-consuming and that aligning EU ambitions with those of the Netherlands will require an active effort to this end. Without expressing a preference, the SER suggests three routes that could be taken to arrive at EU legislation: 1) mount a major lobbying effort in the EU; 2) mount a major lobbying effort in the EU and evaluate progress in mid-2021; 3) develop EU and national legislation simultaneously.² The ATR asserts that the proportionality of the policy mixes cannot yet be gauged. But it advocates circumspection, from the viewpoint of proportionality, with regard to introducing binding measures,³ and advises waiting for EU policy on RBC to take shape before adopting national measures.⁴

Partly in light of these advisory opinions, the government proposes a RBC policy consisting of a mix of mutually reinforcing measures which together should lead to an effective change in behaviour among the target group (i.e. businesses, which are divided according to their progress on RBC into the leading pack, the peloton and the laggards). This policy mix allows for a response tailored to the circumstances and for measures that impose obligations, setting the right conditions, incentivise, facilitate and inform (a so-called 'continuum' in which the various tactics the government can use with policy instruments are represented). The mix also combines new instruments with existing ones, which will be reinforced on the basis of the evaluations of RBC policy. The government agrees with the SER that bringing the various actors together and exerting more influence on the supply chain are also crucial factors in devising an effective policy.

Imposing obligations

A key element of the new smart mix is a general due diligence obligation. The effect of this mandatory element will mainly be to spur laggards into action, by obliging them to observe the principles of responsible business conduct. In line with the SER's observations, the government expects that an obligation can help level the playing field within the Dutch business community

¹ Baseline option: continuation of current policy, including the Child Labour (Duty of Care) Act (WZK); option 1: tightening up of current policy, such as by setting up an ICSR support office, including the Child Labour (Duty of Care) Act; option 2: wide-ranging due diligence legislation, plus ICSR support office and further tightening up of current policy; option 3: stronger focus on transparency legislation, plus ICSR support office and further tightening up of current policy.

² Social and Economic Council (September 2020). *Samen naar duurzame ketenimpact*, pp. 37-38.

³ Dutch Advisory Board on Regulatory Burden (August 2020). *Internationaal Maatschappelijk Verantwoord Ondernemen*, p. 11.

⁴ Dutch Advisory Board on Regulatory Burden (August 2020). *Internationaal Maatschappelijk Verantwoord Ondernemen*, p. 7.

because laggards will also be required to comply with the OECD Guidelines. A general obligation to carry out due diligence ties in with the OECD Guidelines and recognises that problems are not confined to one particular sector or theme.

Studies and consultations show that such an obligation is most effective if it is formulated at EU level; a European approach makes for a greater impact in the supply chain and safeguards a level playing field. The government's efforts therefore focus primarily on a European obligation for businesses to carry out due diligence in their supply chains (in line with the OECD Guidelines and the UN Guiding Principles). The European Commission is currently working on a possible legislative initiative on sustainable corporate governance, including due diligence. The government is confident that due diligence legislation of the kind it envisages will be introduced at EU level.

The SER points to the interaction between the EU and national policy space and to possible interference between national and EU policy. At the same time, in 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 organisation of oversight and the scope of the Act, which must be addressed with due regard for proportionality and 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.

Building on the insights gained from the policy evaluation and exploration of policy options, the government is therefore working out these aspects 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 are at hand to introduce binding measures at national level.

The government has heeded the SER's advice on the need to closely monitor both progress on this issue at EU level and the achievement of the Netherlands' ambition. The cabinet suggests taking stock of the state of play at European level in the summer of 2021. Both the European Commission's proposal on sustainable corporate governance and the position taken by the European Parliament and the member states are important in this regard.

[But also setting conditions, incentivising, facilitating and informing](#)

The SER argues that optimising existing policy will increase the impact of implementing the OECD Guidelines. This involves a wide-ranging deployment of policy instruments, and measures to make those instruments stronger, in order to inform, facilitate, incentivise and set conditions.⁵ In addition, the ATR points out that it is important for SMEs in particular to know where they can get support to comply with measures.⁶

All the components of the continuum are incorporated into the government's proposal. Besides a general due diligence obligation, the mix of measures therefore includes the existing EU transparency legislation,⁷ reaffirms the importance of setting conditions within private-sector instruments and for government procurement, and retains financial incentives. Ongoing

⁵ Social and Economic Council (September 2020). *Samen naar duurzame ketenimpact*, p. 22.

⁶ Dutch Advisory Board on Regulatory Burden (August 2020). *Internationaal Maatschappelijk Verantwoord Ondernemen*, p. 10.

⁷ Directive 2014/95/EU on the disclosure of non-financial and diversity information by certain large undertakings and groups.

encouragement of and support for sector-wide cooperation are essential in facilitating responsible business conduct, by for example bringing parties together and increasing influence. The SER points out that sector-wide cooperation is also instrumental within the mix of mutually reinforcing measures. The government will set up an RBC support office. It must be accessible to both businesses that will be subject to the due diligence obligation and businesses that, while not being subject to that obligation, are nevertheless expected to comply with the OECD Guidelines and the UN Guiding Principles. The RBC support office must function as a one-stop shop. It must inform businesses about carrying out due diligence and help them do so. The consultations highlighted that SMEs in particular need this kind of support. The support office must prevent services being provided in a fragmented manner and help limit the regulatory burden on businesses.

The Netherlands is in favour of making voluntary and supportive measures of this kind part of a comprehensive EU Action Plan on RBC too. This is in keeping with an effective RBC policy as envisaged by the SER. The Netherlands will work actively to establish such a policy. An EU action plan must help create a European level playing field for RBC and increase the combined impact achieved in producer countries by addressing risks to people and the environment in businesses' global value chains.