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Re Dutch response to the Roadmap for the initiative on sustainable corporate governance

We welcome and appreciate the opportunity to comment on the Commission's roadmap for the initiative on sustainable corporate governance. According to the Commission this initiative would, among other things, help companies to better manage sustainability-related matters in their own operations and value chains.

The Dutch government is currently undertaking an evaluation trajectory with regard to its policy on responsible business conduct (RBC)ⁱ. The basis of RBC is the application of due diligence by companies in line with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. The conclusion of the trajectory is expected this Fall.

As part of this trajectory, stakeholder consultation has taken place and the private sector and civil society have participated actively. Not only during consultations but also in interviews and in the advisory committees, such as the Social and Economic Council of the Netherlands (SER), in which employers, employees and independent experts are represented.

Several studies were conducted and expert advice was gathered on RBC policy. Most recently, the SER published their advice on several options for a smart mix of measures to foster RBC.¹ The advice advocates an ambitious European mix of binding and voluntary measures, including due diligence legislation in line with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

The aforementioned studies contain important insights and can provide relevant input for an effective EU policy on RBC. We propose that the Commission build on these studies and therefore take note of:

- "Strategies for Responsible Business Conduct" by PwC (2018)ⁱⁱ
- "Evaluation international RBC policy: mind the governance gap, map the chain" by the independent policy and operations evaluation department (IOB) of the ministry of Foreign Affairs of the Netherlands (2019)ⁱⁱⁱ

¹ The SER is in the process of translating the document from Dutch to English.

- “Options for binding instruments for RBC” by the Erasmus Platform for Sustainable Business and Human Rights and Erasmus School of Law (2020)^{iv}
- “Business’ perspective on RBC measures” by The Terrace (2020)^v
- “Monitoring report on the adherence to the OECD Guidelines and UNGPs by Dutch large companies” by EY (2020)^{vi}
- “Insights into a smart mix of voluntary and compulsory RBC measures” by Anderson Elffers Felix (2020)^{vii}
- “RBC measures seen in market transformation perspective” by Nyenrode Business University (2020)^{viii}
- “Evaluation of the Dutch RBC Agreements 2014-2020” by the Royal Tropical Institute (2020)^{ix}
- Advice on possible RBC measures by the Dutch Advisory Board on Regulatory Burden (2020)^x
- “Together towards sustainable impact in the value chain” by the Social and Economic Council of the Netherlands (2020)^{xi}

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Based on the studies and consultations, several topics were identified that warrant further investigation. When designing the proposal on sustainable corporate governance, we recommend the Commission to address these topics as part of their research:

- The expected effects (including costs and benefits) of the proposal on the environment and on all stakeholders in the European Union and in third countries.
- Proportionality and regulatory burden, notably when detailing the proposal and determining its scope.²
- Alignment of the proposal, including supervision, with the nature of the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights. These frameworks lay down due diligence as a process of continuous improvement and they provide flexibility for companies when adapting due diligence requirements to their own circumstances.
- Alignment with existing measures (such as the Non-Financial Reporting Directive and the Circular Economy Action Plan) in order to achieve an integrative approach and prevent unnecessary policy overlap.
- Legal certainty and alignment of the proposal with existing rules of private international law.

We will continue to provide relevant input during this entire process and remain at your disposal for any further questions.

ⁱ <https://www.government.nl/topics/responsible-business-conduct-rbc/evaluation-and-renewal-of-rbc-policy>

ⁱⁱ <https://www.rijksoverheid.nl/documenten/rapporten/2019/02/22/strategies-for-responsible-business-conduct>

² This includes a Full Impact Assessment involving the EU Regulatory Scrutiny Board.

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- iii <https://english.iob-evaluatie.nl/publications/evaluations/2019/09/01/433-%E2%80%93-iob-%E2%80%93-evaluation-of-the-dutch-governments-policy-on-international-responsible-business-conduct-2012-2018-%E2%80%93-mind-the-governance-gap-map-the-chain>
- iv <https://www.government.nl/topics/responsible-business-conduct-rbc/documents/publications/2020/04/21/summary-legislative-options>
- v <https://www.government.nl/topics/responsible-business-conduct-rbc/documents/publications/2020/04/21/summary-business-perspective-on-rbc-measures>
- vi <https://www.government.nl/topics/responsible-business-conduct-rbc/documents/publications/2020/04/21/summary-monitoring-report-on-adherence-to-oecd-guidelines-and-ungps>
- vii <https://www.government.nl/topics/responsible-business-conduct-rbc/documents/publications/2020/04/21/summary-insight-in-smart-mix-of-voluntary-and-compulsory-measures>
- viii <https://www.government.nl/topics/responsible-business-conduct-rbc/documents/publications/2020/03/15/summary-international-rbc-measures-in-market-transformation-perspective>
- ix <https://www.rijksoverheid.nl/onderwerpen/internationaal-maatschappelijk-verantwoord-ondernehmen-imvo/documenten/rapporten/2020/07/08/evaluation-of-the-dutch-rbc-agreements-2014-2020>
- x <https://www.atr-regeldruk.nl/internationaal-maatschappelijk-verantwoord-ondernehmen/>
- xi <https://www.ser.nl/nl/adviezen/duurzame-ketenimpact>

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