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Evaluation of the Dutch RBC Agreements 2014-2020:

Are voluntary multi-stakeholder
approaches to responsible business
conduct effective?

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Colophon

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Acronyms

ACM	Netherlands Authority for Consumers and Markets
AGT	Dutch Agreement on Sustainable Garments and Textile
ASM	Artisanal and Small-Scale Mines
BSCI	Business Social Compliance Initiative
CBI	Centre for the Promotion of Imports from developing countries
CBL	Centraal Bureau Levensmiddelenhandel
CBS	Statistics Netherlands
CNV	Christian Trade Unions in the Netherlands
CSO	Civil Society Organisation (here: non-governmental organisations and unions)
DBA	Dutch Banking Agreement
DSW-SNS	Dutch Working Group on Sustainable Natural Stone
EP	Equator Principles
ESG	Environmental Social Governance
EU	European Union
EUTR	European Union Timber Regulation
FBK	Fund Against Child Labour
FFG	Fair Finance Guide
FGZ	Federatie Goud en Zilver
FLEGT	Forest Law Enforcement, Governance and Trade
FNLI	Federatie Nederlandse Levensmiddelen Industrie
FNV	Netherlands Trade Unions Federation
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
FSI	Floriculture Sustainability Initiative
ICN	Indian Committee of the Netherlands
IDH	Sustainable Trade Initiative
IFC	International Finance Corporation
ILO	International Labour Organisation
IOB	Directie Internationaal Onderzoek en Beleidsevaluatie
IRBC	International Responsible Business Conduct
ITC	International Trade Centre
IUCN	International Union for Conservation of Nature
KNSV	Koninklijke Nederlandse Specerijenvereniging
LIW	Landelijke India Werkgroep
MoFA	Ministry of Foreign Affairs
MNE	Multinational Enterprises
NCP	National Contact Point
NGG	Nederlandse Gilde van Goudsmeden
NGO	Non-Governmental Organisation
NVB	Nederlandse Vereniging van Banken
OECD	Organisation for Economic Co-operation and Development
PEFC	Programme for the Endorsement of Forest Certification
PPSA	Purchasing Practices Self-Assessment
RBC	Responsible Business Conduct
RQ	Research Question
RVO	Netherlands Enterprise Agency
SBI	Standaard Bedrijfsindeling
SER	Economic and Social Council

SKC	The Clean Clothes Campaign
SLC	Stop Child Labour
SME	Small and Medium sized Enterprise
SOMO	The Centre for Research on Multinational Corporations
STIP	Sustainable Timber In Product
UNGP	United Nations Guiding Principles on Business and Human Rights
UNICEF	United Nations International Children's Fund
UNPRI	United Nations Principles for Responsible Investment
UN SDGs	United Nations Sustainable Development Goals
VCP	Trade Union Federation for Professionals
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
VPs	Voluntary Principles on Security and Human Rights
WITS	World Integrated Trade Solutions

Management summary

Introduction

This report presents the findings of the evaluation of sector-level agreements on Responsible Business Conduct (henceforth RBC agreements). The evaluation was commissioned by the Dutch Ministry of Foreign Affairs in the context of its project 'Putting Responsible Business Conduct (RBC) Measures in Perspective' to evaluate and review its current policy on RBC. The objective of this evaluation is to gain insight into the extent to which RBC agreements advance the implementation of due diligence in conformity with the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Dutch 'high-risk' sectors.

The report covers 11 RBC agreements in the following sectors: coal (start of implementation: November 2014), garments and textile (July 2016), banking (December 2016), forestry (March 2017), gold (July 2017), food products (June 2018), insurance (July 2018), pension funds (January 2019), metals (July 2019), floriculture (September 2019) and natural stones/TruStone (October 2019). The agreements on coal and banking were finalised in late 2019; all other agreements are ongoing. The oil and gas, chemical and electronics sectors—all high-risk sectors—were analysed to understand their progress on due diligence according to international RBC guidelines in the absence of an RBC agreement.

The evaluation follows a theory-based approach focused on validating the underlying Theory of Change (ToC) of the different RBC agreements by gathering evidence on the achieved outputs, outcomes and (examples of) impact. For each RBC agreement, two main types of information sources were used: (1) primary data from key informant interviews with RBC secretariats, signatories and partners of the agreements (companies, sector associations, Government Ministries, non-governmental organisations (NGOs), unions) and non-member organisations (NGOs, companies, other organisations); and (2) secondary data from RBC secretariats, public communications, reports and documents from the Dutch Government and parliament, and third party studies. A total of 134 semi-structured interviews were conducted for the evaluation. It should be noted that the early stage of implementation of six RBC agreements limits the extent to which information was available and results can be expected.

Below we summarise our key findings vis-à-vis the overall objectives of the evaluation:

- i. Assessing the extent to which the RBC agreements are successful;
- ii. Identifying the success factors and weaknesses of the RBC agreements;
- iii. Recommending necessary improvements to make the RBC agreements more effective.

Are the RBC agreements successful?

Substantial progress on due diligence implementation in line with the OECD Guidelines and UNGPs so far can only be reported for the agreements on garments and textile, and banking, which were both signed in 2016. Both agreements have effectively promoted due diligence implementation by adhering companies, specifically on the first steps of due diligence: establishing RBC policies, communicating these policies and identifying and assessing adverse impacts. The garments and textile agreement also shows tentative progress by signatory companies in addressing those adverse impacts. The coal agreement lacked monitoring structures, which means that clear progress on due diligence cannot be ascertained. In the case of the gold agreement, some improvements on due diligence are recognisable, but progress is slow and several companies do not yet comply with the requirements. The agreements signed in 2018 (food products, insurance and pension funds) and 2019 (metals, floriculture and TruStone) have started their implementation and are, mostly, at the awareness raising and knowledge-building stages. Therefore, progress reported on company compliance is limited so far. The forestry agreement does not focus on due

diligence, but aims at stimulating sustainable forest management, particularly through the use of certified timber. Thus, in its current form, the forestry agreement is not sufficient to make a difference on due diligence in supply chains, in particular in the longer supply chains (i.e. non-food retail).

No evidence for substantial progress on due diligence was found for the three investigated high-risk sectors *without* an RBC agreement (oil and gas, chemicals, electronics). Within the limitations of comparing different sectors, this suggests that more progress on due diligence can be observed in the presence of an RBC agreement than without.

While results of RBC agreements on due diligence are only (slowly) starting to manifest, RBC agreements effectively contribute to the following: they raise awareness about due diligence, support learning and facilitate company compliance through a support infrastructure, monitoring and assessment, and continuous interaction with civil society organisations (CSOs), i.e. NGOs and unions. This is particularly important as due diligence in line with the OECD Guidelines and UNGPs has been a new process for most companies participating in RBC agreements and smaller companies, in particular, face difficulties, such as capacity constraints, in conducting due diligence.

Success in advancing due diligence also depends on the number and size of companies reached through the RBC agreements. Reach, in terms of market coverage, is high for coal, banking, insurance and pension funds, as these RBC agreements have a market share of more than 90%. The garments and textile agreement has medium market coverage (40-45%). For the other agreements, the assessment of market coverage is based on a comparison of the number of signatory companies to the total number of companies in the sector. Based on these numbers, the gold and TruStone agreements are assessed as having medium to low market coverage, and the floriculture and metals agreements are assessed as having low market coverage. For food products and forestry, market coverage could not be assessed because individual companies are not asked to formally commit to these agreements. Overall, 394 individual companies have formally committed to an RBC agreement so far and another 100 companies have signed an associated code of conduct in the gold sector. Based on this total of 494 companies, RBC agreements currently reach 1.6% of the total number companies in the 13 sectors with high RBC risks in the Netherlands (as identified by the KPMG Risk Assessment in 2014).

The RBC agreements' success is further assessed based on impact: Have the RBC agreements contributed to positive effects on adversely affected groups or communities in the priority sectors? The pathways to impact are important to consider in this context. The (reconstructed) ToC of the RBC agreements assumes that the activities undertaken by participants in the agreements (outputs), lead to the implementation of due diligence by companies in a specific sector (outcomes), which in turn leads to actual improvement of negative impacts in specific value chains (impacts). The main impact pathway is therefore the implementation of due diligence processes, whereby companies address risks and actual adverse impacts in their supply chains. This pathway (at outcome and impact level) is inherent to the OECD Guidelines and UNGPs—and therefore not exclusive to the RBC agreements but hold for all policy instruments based on these guidelines.

Across the RBC agreements, progress on due diligence is largely too limited to identify concrete impacts. Only the agreements on banking and garments and textile reported having advanced to the early stages of company action. In the case of banking, due diligence systems have been put in place, indicating that the burden of proof is now on banks to measure and report on concrete results achieved. In garments and textile, reporting on risk mitigation has started but evidence for impact is lacking so far.

A second impact pathway of the RBC agreements is via collective activities to address sector-specific themes and to deal with actual adverse impact in producing countries. Joint projects have commenced in the agreements on textile and garment, gold, TruStone and food products. In addition, one collective project has been started as a spin-off to the banking agreement after it ended. Projects are generally considered having a demonstration effect (e.g. on how to engage with suppliers), but are limited in scope

and the number of participating companies. The food products project on living wages in the banana sector is an exception, as it includes almost all big Dutch supermarkets—and therefore their combined banana demand—and it aims to reduce the living wage gap for all plantation workers supplying the Dutch market.

Concrete and independent evidence of impact in any of the projects is not yet available, also because of the (relatively) recent start of many activities and limited (independent) reporting. Collective complaints mechanisms do not play an important role in RBC agreements, except for garments and textile, which is the only agreement at this stage with an independent complaints mechanism for external stakeholders. However, this complaints mechanism is not yet fully functional; due to issues of accessibility and transparency, among other factors.

A third pathway, followed by the forestry and coal agreements, involves a focus on standards and certification as a mechanism for addressing RBC risks in production locations. The forestry agreement builds on the earlier Green Deal initiative and became an RBC agreement 'at the last minute' in the negotiation process. Estimates indicate that the agreement has exceeded its 2020 import targets for timber from boreal and temperate forest areas, but the results for tropical hardwood, where most RBC risks occur, are lagging behind the ambitious target (60-70% compared to the target of 75%). With regard to the coal agreement, positive developments include the increased number of Bettercoal-audited suppliers and greater uptake of audited coal. However, it is impossible to distinguish the effects of the coal agreement from Bettercoal itself, as companies in the coal agreement implemented many of their activities in the context of Bettercoal. The additionality of the coal agreement therefore remains unclear. Concrete evidence for improvements in the conditions of affected coal mining communities could not be found.

Overall, we have not observed a reduction in negative impacts in global value chains as a result of the RBC agreements. Of course, achieving positive effects in global value chains is challenging for individual Dutch companies in view of their relatively small individual leverage. However, RBC agreements are based on the idea that they offer companies the opportunity to increase their leverage through collaboration between companies and with other stakeholders. Such increased leverage is indeed a potential added value of RBC agreements as collaborative initiatives. However, collective action is constrained by companies' disincentives to be transparent and to collaborate with competing companies and other stakeholders due to commercial interests, client confidentiality, competition law and an uneven international playing field.

Several RBC agreements therefore recognise the importance of scaling and collaborating with related (international) initiatives as a fourth impact pathway. Some efforts for international alignment and upscaling have been observed, such as the establishment of TruStone as a bilateral agreement with Flemish partners, the collaboration of the garments and textile agreement with the German sister-initiative Partnership for Sustainable Textiles and the OECD alignment assessment, also by the agreement on garments and textile. Other agreements, however, have fewer activities on upscaling.

In assessing the 'success' of the RBC agreements we therefore advocate taking a broader view than the 'due diligence' and 'impact' perspective as described above, also in view of the early stage of many RBC agreements and the intermediate character of many results. The following findings confirm an important role of RBC agreements in the RBC policy landscape.

First, most RBC agreements, except for coal and forestry, are concrete attempts to give shape to international RBC guidelines: they stimulate companies to publicly commit to comply with the RBC guidelines and they have put in place reporting frameworks and (largely independent) monitoring structures to follow up on those commitments. RBC agreements contribute to a harmonised and structured approach on due diligence among participants, particularly when they develop detailed assessment frameworks against the OECD Guidelines.

Secondly, the RBC agreements have had significant success in raising awareness about due diligence and in creating space for cross-sector knowledge exchange and collaboration. Despite the large (time) investments required, most participants perceive their participation in RBC agreements as positive and virtually all respondents reported having increased their knowledge on due diligence and international RBC guidelines, also because of the various knowledge-sharing events organised and guiding tools developed.

Thirdly, participants praised the platform function of RBC agreements—particularly its ability to build trust, facilitate new interactions between CSOs and the private sector, and initiate innovative partnerships that would otherwise not have emerged. Furthermore, RBC agreements offer a (safe) platform to discuss alleged misconduct in supply chains and to come up with a coordinated response. While there seems to be limited inherent willingness by companies to communicate openly and transparently about (allegations of) adverse impact in their supply chains, CSOs have used RBC agreements to address specific grievance cases. This does not translate into liability for companies, but CSOs can utilise both internal and/or public pressure to put items on the agenda of RBC agreements and thereby create additional pressure on companies to act.

These last three points demonstrate important areas of success of RBC agreements at this stage. However, not all RBC agreements perform equally well. For example, the coal agreement, also because of its different character, did not stimulate and monitor company compliance with due diligence, nor did it offer a platform for interaction and collaboration (apart from annual consultative meetings with CSOs). The forestry agreement also follows a different approach and its ambitions show a mismatch with the current expectations and RBC instruments of the Dutch Government. At the same time, an increased push towards due diligence may risk demotivating the various sector associations involved, which shows the challenge of taking a well-established cross-sector initiative with a specific goal (promoting sustainable forest management) and turning it into an RBC agreement in line with the SER advisory report.

Moreover, some RBC agreements also struggle in defining their own relevance vis-à-vis existing initiatives. Many sectors are characterised by various, often international initiatives which aim to address RBC risks, albeit typically not by means of due diligence, but through different forms of collaboration, standards and certification. However, how RBC agreements relate to these initiatives, where their potential added value lies, and what stakeholders stand to gain, often remains unclear. A number of RBC agreements also experience tensions as a result of other (often CSO-driven) initiatives in their respective sectors, which criticise and question the progress made by RBC agreements.

Finally, the benefits of having these RBC agreements must be assessed against the costs. The average direct implementation costs of an RBC agreement—excluding time investments by signatories and the investment costs in RBC by companies—is estimated at about €1.48 million per agreement and about €84,472 per signatory company. There is, however, large variation between agreements in the total budgeted costs as well as in the budgeted costs per signatory company, which suggests there is scope for efficiency improvements. One key aspect that impacts efficiency is the number of companies that signed an RBC agreement: the implementation costs per signatory company decreases with more signatory companies due to high fixed implementation costs (costs independent of the size of the agreement). While the insurance agreement, with 171 signatory companies, has the lowest implementation budget of €5,692 per signatory company, the metals agreement, with (currently) 7 signatory companies, has the highest implementation budget of €195,381 per company. It is thus imperative for the smaller agreements, such as metals, TruStone, floriculture, and gold, to grow in order to become more relevant, effective, and efficient.

What are the success factors and weaknesses of the RBC agreements?

RBC agreements do not follow a detailed project or programme design, but are largely organic multi-stakeholder processes based, to varying degrees, on the underlying principles established by the advisory report of the Social and Economic Council (SER, 2014). As such, the RBC agreements are negotiated agreements—hence, compromises—between sector associations and other stakeholders, reflecting the level of sector ambitions, the targeted input by other parties and the amount of public pressure that shaped the negotiation process. These differences between RBC agreements can be traced up until implementation. For example, some agreements have high market coverage whereas others have only low market coverage (see Chapter 4 of this evaluation); there are agreements with strong due diligence commitments whilst others did not make extensive commitments (Chapter 5); and there are agreements with several collective impact initiatives, whereas others do not or hardly look at collective impact (Chapter 6).

Success factors

Below we discuss the ingredients that are present to varying degrees in the different RBC agreements and which contribute to success.

- ❖ **Public pressure** (from NGOs, government, media and parliament) is a critical success factor for RBC agreements, as it motivates companies to undertake RBC as a way to manage reputational risks and/or to pre-empt legislation. Pressure has been shown to be important for:
 - a. Promoting negotiations with sector associations, many of which were preceded or accompanied by sector-specific incidents, CSO campaigns and public discussion;
 - b. Motivating companies to sign the RBC agreements and to comply with due diligence requirements, as CSO pressure—although experienced as frustrating by participating companies, is important to maintain commitment; and
 - c. Instigating collective activities in production locations, as CSOs are pressuring to show that progress ‘on paper’ translates into concrete results.
- ❖ **Intrinsic sector motivation** to address specific RBC risks is important for increasing the chance of successful negotiations and to raise the level of ambition of RBC agreements. Intrinsic motivation equally relates to whether sectors recognise the potential added value of collaborating with other parties to strengthen and improve due diligence implementation. Sector motivation also influences the implementation of RBC agreements: in sectors where the drivers behind an RBC agreement predominantly come from outside of the sector (e.g. political pressure), companies are also less motivated to comply with due diligence requirements.
- ❖ **Trust, and how it is built in the process**, has been an important (yet fragile) factor in view of competing interests and objectives between participating organisations in RBC agreements. This is not only relevant during negotiations, but also during implementation. Trust is particularly challenging when NGOs and unions take their ‘watchdog’ role outside of RBC agreements seriously and when this dual role of partnering and advocacy is not fully understood or appreciated by companies.
- ❖ **Strong process facilitation** is therefore imperative to create a common understanding of the agreement’s objective and to build trust among participants. Participants in various RBC agreements perceive the SER, in particular, as a neutral organisation with valuable experience in guiding multi-stakeholder negotiation and implementation processes.
- ❖ **Support** offered by RBC agreements (especially by secretariats and other parties within the agreements) is important **to reduce the complexity of due diligence** for individual companies. Support is particularly relevant for companies with little or no prior experience in this regard and for

companies experiencing capacity constraints to implement due diligence—in both cases, these are often SMEs.

- ❖ **Reporting requirements** of RBC agreements against an established assessment framework contribute to due diligence compliance. By translating due diligence objectives into a staggered approach of steadily increasing company commitments, compliance is facilitated, especially for companies without prior experience with due diligence.
- ❖ **Independent monitoring** of companies' performance on due diligence requirements increases stimulus perception by companies and is important for the credibility of RBC agreements, both internally and with external stakeholders. Most RBC agreements have such independent monitoring, except for the agreements on forestry (no monitoring as there are no commitments at company level), coal (monitoring was 'outsourced' to Bettercoal) and food products (partially but not fully independent monitoring).
- ❖ RBC agreements create a **platform for discussions** on (alleged) misconduct in supply chains. The platform offers a safe environment to juxtapose company due diligence processes with the realities on the ground and to motivate collaboration to address this misconduct. Discussions on misconduct have also been shown to re-energise collaboration within the agreements and remind participants of the relevance and urgency of due diligence.

Weaknesses

Below we discuss the weaknesses of the RBC agreements, i.e. areas which hamper the performance of RBC agreements. Some of these weakness may be inherent to the RBC agreements, while others could potentially be addressed (see the recommendations below).

- ❖ There is **no set minimum standard** (or benchmark) on (a) the design/setup of RBC agreements (e.g. participants, roles, engagement, due diligence requirements, compliance checks); and (b) the impact and results' ambition of RBC agreements (e.g. sector-specific themes, collective projects, outreach and alignment, collective grievance, etc.). While the idea of the SER advisory report was to have customised agreements based on guiding principles, including the OECD Guidelines and UNGPs, variation between RBC agreements is high. This makes it difficult to identify and address underperformance on specific aspects of individual agreements or RBC agreements as a whole. It also contributes to continuous differences in expectations between companies and CSOs, e.g. on the extent to which RBC agreements should function as platforms to internally hold companies accountable for progress on due diligence and misconduct signalled in their supply chains.
- ❖ RBC agreements (those without high market coverage) **fall short on incentivising new companies** within the Netherlands to sign the agreement. While some agreements have managed to attract new companies, overall, they encounter different barriers that limit growth ambitions (e.g. international companies active in the Netherlands show limited interest in a Dutch initiative; companies may perceive a lack of return on investment; and RBC agreements have limited capacity for outreach). In sectors with an RBC agreement, it can plausibly be expected that the companies with the strongest incentives (e.g. reputation management) and highest capacity have already signed the agreement. This suggests that the companies that did not yet sign the agreement either have less incentive to join or have less capacity to make the required commitments.
- ❖ The scope of the RBC agreements is **predominantly national**. With the exception of the metals, TruStone, and garments and textile agreements, there is also limited effort to scale up the initiatives to an international level. This constrains further growth in signatory companies (particularly multinationals are less likely to join a national initiative) and limits the potential for creating an international level playing field.

- ❖ There are **limitations in what RBC agreements monitor** (and publish), which particularly concerns the quality of companies' due diligence processes, their outcomes and impact. Concerns raised by CSOs refer to the lack of oversight of individual company performance due to confidentiality protocols and external assessments that question whether companies actually address salient risks rather than 'merely' identifying and assessing (potential) risks. Limitations in the depth of monitoring carry a risk of greenwashing, despite most RBC agreements having independent monitoring in place.
- ❖ RBC agreements also **fall short on incentivising adhering companies to do well** and achieve impact (stimuli perception). Many companies have few economic incentives for due diligence, e.g. because business models are based on low margins (and often high production volumes) in fairly saturated markets and/or because demand for due diligence, either by clients or consumers, is low. This is even more pronounced in the absence of an international playing field. RBC agreements, as voluntary initiatives, are not able to address such disincentives.
- ❖ **Weaknesses in showing positive impact** on (potentially) adversely affected groups and communities are observable for RBC agreements. On the one hand, showing impact is limited by measurement challenges and the early phase of many activities, e.g. of individual due diligence and of collective projects. On the other hand, it is unclear whether and when impact could manifest in the future. A clearer underpinning by RBC agreements is needed of how they aim to create impact, with targets and indicators for the different types of desired impact.
- ❖ A degree of **mismatch between expertise and capacity available** among the parties in the agreement and the required expertise by companies was observed for a number of RBC agreements. Reasons include: a) limited number of NGOs with sector-relevant expertise, especially on environmental issues; b) capacity constraints of NGOs and unions hindering increased participation; and c) lacking engagement mechanisms for stakeholders from producing countries (with first-hand experience on adverse situations).
- ❖ RBC agreements are **struggling with commercial interests, competition law and issues of client confidentiality**, which affects transparency regarding production locations, potential RBC risks and supply chain policies. Competition and client confidentiality also reduce companies' ability to join forces on complex issues. The use of competition law arguments as a reason not to share individual company data is highly disputed by CSOs. Indeed, it is not always clear how data sharing and collaboration with other stakeholders would eventually limit competition. Furthermore, the interpretation of confidentiality limits the goal of RBC agreements to achieve more impact through collaborative efforts.

How to make the RBC agreements more effective?

1. Improve monitoring and reporting on due diligence progress

While many RBC agreements already have reporting and monitoring procedures in place, targeted improvements can help to make sure that companies demonstrate practices in line with the OECD Guidelines and UNGPs. RBC agreements should revisit their procedures to: (a) assess changes in company behaviour (e.g. changes in decision-making processes on suppliers/clients/investee companies, supplier relationships, stakeholder engagement); (b) assess the quality of company actions on identified risks (e.g. whether actions are commensurate with the risks); and (c) assess companies' monitoring of the effects of their actions on identified risks (e.g. tracking of activities and goals). External CSO assessments can be helpful in pointing RBC agreements to areas of (potentially) weak performance of companies, which should be assessed by the monitoring body responsible.

Based on the annual monitoring, RBC agreements should publicly report in detail on companies' performance without disclosing the identity of individual companies.

2. Enhance internal transparency of company performance

Transparency of individual company performance should be increased internally in RBC agreements based on strict confidentiality protocols. Firstly, greater transparency should facilitate enhanced engagement with CSOs to support companies in undergoing due diligence processes. This would enable CSOs to better play their envisaged role as providers of expertise. Secondly, as companies often show limited willingness to communicate openly and transparently about misconduct in their supply chains, increasing internal transparency in RBC agreements would also enable a better system of checks and balances. For example, transparency should ensure that companies focus on salient risks (to external rights-holders) instead of risks that may be relatively easy to address or (material) risks to the company. At the same time, transparency requires strict agreements on how CSOs are able to deal with company-specific information—for example, it should be clear that CSOs are not able to use company-specific information for an external watchdog role.

3. Improve monitoring and reporting on collective impact

RBC agreements should improve the monitoring of collective impact, e.g. activities on sector-specific themes, collective projects, case engagement, bilateral projects, and outreach and alignment. Currently, monitoring and reporting focuses on outputs, takes place infrequently and is of variable quality and quantity. To trace the impact of RBC agreements—and make a strong case for their added value to a wider audience—RBC agreements should report on concrete results achieved to a (much) greater extent than currently. This requires formulating specific targets and (quantitative and qualitative) result indicators. Reporting should be made publicly available, so that collective activities can be critically followed and discussed.

4. Create demand for RBC by applying a buyer-supplier model

Creating demand for products that have been produced in accordance with the international RBC guidelines by companies further downstream in the value chain can incentivise companies to join an RBC agreement and invest in due diligence. Many RBC agreements disregard the demand side as an important stimulus for company behaviour. Important exceptions are the forestry and TruStone agreements, which explicitly integrate demand creation for RBC in their collaboration. The model pursued by TruStone is particularly interesting, as the initiative includes natural stone importers and sellers as well as municipalities as key clients of signatory companies. By being part of TruStone, municipalities get informed on potential risks and harmful situations in production locations and they receive support on integrating due diligence requirements into public procurement requirements. Suppliers to those municipalities, in turn, are incentivised to also join the agreement and invest in due diligence.

There is scope for other RBC agreements to apply similar buyer-supplier models, whereby a conscious effort is made to involve companies at different stages of the value chain and to look for ways to foster collaboration between these companies. Where buyers (or suppliers) are not part of the agreements (yet), specific outreach efforts are suggested to exploit these buyer-supplier relationships.

5. Improve outreach strategies to attract companies based on a clear value proposition

Scale is key for the effectiveness of the RBC agreements, but so far many agreements have been struggling to expand for reasons both outside and within their scope of influence. There is scope for improving the outreach strategies pursued by RBC agreements to attract new companies based on a clear, sector-specific value proposition of RBC agreements. Such a value proposition should clearly articulate what the RBC agreement stands for, how it operates, how it relates to existing initiatives in the sector and (upcoming) legislation, and how new companies would benefit from signing the agreement. Specific working groups in the RBC agreements could be tasked with developing the value proposition. However, outreach

activities to spread the value proposition (e.g. promotional materials and events) require corresponding budgets.

6. Focus on targeted support to SMEs

Uptake of due diligence is especially slow among SMEs who often lack the experience and capacity to actively engage in due diligence without support. Support tools developed by RBC agreements are most relevant if they are customised to companies' specific conditions and context, which emphasises the need for a targeted approach to support SMEs. While such targeted support is already happening to varying degrees by different agreements, there is much scope for the RBC agreements to learn from each other's experiences.

The code of conduct for small-scale jewellers and gold smiths in the gold agreement offers a particularly interesting experiment: it potentially promotes due diligence while keeping the required investments low for small companies. Close monitoring in the future should provide insight into the effects of having such a code of conduct for SMEs (e.g. rise in membership in gold agreement, increased demand for due diligence, etc.). Additional efforts to mitigate the capacity constraints by SMEs include SME-specific reporting rules, tools, peer learning sessions and, in case relevant, a monetary discount to participation in the RBC agreement.

7. Facilitate meaningful collective engagement with (potentially) affected stakeholders

Meaningful engagement with affected stakeholders ('rights-holders'), in scope and procedural terms, is central to due diligence. However, this is recognised as an important challenge for individual companies due to physical and cognitive distance, costs and limited local contacts. As a result, companies' due diligence efforts are at risk of falling short of the OECD Guidelines. Discussions on (alleged) misconduct in companies' supply chains also usually do not emerge based on local stakeholders' direct accounts but are typically raised via NGOs, unions and media attention. Therefore, RBC agreements should consider how to better involve local stakeholders that represent affected groups/communities, such as local NGOs, unions, human rights organisations, governments and other entities at this level. Since individual companies may face limitations in their ability for meaningful stakeholder engagement, RBC agreements should explore how structural collaborations with local partners can be sought.

8. Improve access to remedy via effective complaints mechanisms

Most RBC agreements consider remediation an individual responsibility and do not focus on a collective complaints mechanism for improved access to remedy. However, there are concerns that companies do not establish adequate individual complaints mechanisms and smaller companies, in particular, may lack the required resources and capacities. Seeing that affected communities are often also unable to link an adverse impact to a specific company, attention to collective mechanisms should be increased. The (positive and negative) lessons learned by the agreement on garments and textile, as the only agreement with collective grievance so far, could serve as a guide. This includes the importance of an informal (non-judicial) complaints mechanism which meets the UNGPs and OECD 'Due Diligence Guidance' (e.g. transparency, accessibility, gender-sensitivity, etc.) and can be safely accessed by affected groups and communities without fear of retribution. Linkages to other like-minded initiatives should be explored for best practice sharing and potential joint action on a collective complaints mechanisms.

9. Put more emphasis on international alignment and upscaling

It is critical to scale-up internationally and collaborate with related (international) initiatives to enhance the leverage of participating companies (as there is strength in numbers) and slowly work towards a more level international playing field. Having a common interpretation of the international RBC guidelines is expected to create benefits to business. This is recognised by the Ministry of Foreign Affairs, which has been actively investing in international RBC (multi-stakeholder) initiatives, regulations, and RBC frameworks and guidelines. The low-hanging fruit for the RBC agreements involves aligning the requirements, tools, and monitoring systems of the RBC agreements with other international initiatives

that also stimulate due diligence in accordance with the OECD Guidelines. Participation in OECD alignment assessments is a good starting point, which prepares the ground for further collaboration and, potentially, a joining of forces.

In addition, the Dutch Government could further explore the potential for multi-country RBC agreements. A logical entry-point would be to expand upon the existing multi-country collaborations, such as the European Partnership on Responsible Minerals and the collaboration between the garments and textile agreement, the German Partnership for Sustainable Textiles, and the Sustainable Apparel Coalition. While multi-country RBC agreements are potentially hampered by lower levels of trust, also a partial scaling up, involving a selection of like-minded frontrunner countries (e.g., Belgium, Germany), might prove beneficial. In particular, partial scaling up is important to foster international collaboration, enhance leverage, and convince multinational companies to join.

10. Improve role efficiency and build linkages for better availability of expertise

Several RBC agreements noted a degree of mismatch in the expertise available in RBC agreements, often because of CSOs' capacity constraints, limiting their effective participation. RBC agreements should consider organising CSOs' roles in a more efficient manner in order to address these constraints. A dual structure could be envisaged, with: (a) 1-2 CSOs for negotiation and general quality control and; (b) a pool of specific-purpose CSOs that are exclusively involved in targeted (support / problem-solving) activities.

Moreover, to increase the availability of expertise that RBC agreements can draw upon, they should establish better cross-linkages to ongoing initiatives (e.g. other sustainability initiatives and, importantly, other RBC agreements) and centres of expertise (knowledge/research organisations, NGOs, consultancies).

11. Establish clear minimum standards for future RBC agreements and agreement renewals

The Government should define clear minimum standards on the design of the RBC agreements and on envisaged deliverables. This would involve a shift away from underlying principles that convey expectations (e.g. sector-drivenness, trust, multi-stakeholder collaboration) and broad objectives of achieving positive impact on adversely affected groups and communities to a standard that RBC agreements can reasonably well be expected to adhere to. Such a minimum standard should be doable—but also a 'must reach'. Having a minimum standard avoids 'underperformance' of RBC agreements on certain aspects (e.g. lack of CSO involvement), pre-empts continuous differences in expectations between companies and CSOs of what an RBC agreement constitutes, and facilitates harmonisation of RBC agreements with the Government's RBC policy, including other policy instruments.

In the absence of binding commitments (as RBC agreements remain voluntary initiatives), the secretariats would function as an 'accountability partner' that is responsible, within reason, for making the required efforts to meet the agreed minimum standard.

12. Explore alternative—more efficient ways—to achieve the key outputs of the RBC agreements, particularly for those sectors with no or limited coverage.

Key outputs of the RBC agreements include a support structure to raise awareness and assist companies to implement due diligence and a platform where CSOs and private companies meet to discuss potential misconduct and to initiate innovative forms of collaboration. In view of the observed differences in total costs and costs per signatory companies between RBC agreements, there is scope for exploring alternative—more efficient—modalities that could lead to the same outputs, particularly in those sectors with no current RBC agreement or limited sector coverage. Support structures and platforms could be envisaged without detailed written agreements and could, perhaps, also be non-sector specific, persuading a large group of companies to make use of these structures.

13. Integrate the RBC agreements in a broader RBC policy landscape to overcome companies' constraints in achieving compliance and impact on the ground.

The RBC agreements are not a stand-alone solution in stimulating due diligence and achieving impact on the ground. There are a number of constraints faced by companies, which the RBC agreements do not address fully and for which other complementary policy instruments could offer a cost-effective impulse. These constraints include: a) limited financial incentives by companies to invest in due diligence and collective projects; b) limited financial capacity of SMEs; c) competition law; and d) the multi-dimensionality of the underlying causes of misconduct. Examples of potential complementary policy action could include:

- i. Enhancing company incentives to invest in RBC via:
 - Legislation on mandatory company due diligence, including reporting based on the OECD Guidelines and the UNGPs;
 - Further efforts of making government procurement, licensing, corporate taxes, and government service provisioning conditional on compliance with international RBC guidelines;
 - Enhance public pressure through earmarked CSO financing for research on the identification of misconduct in specific value chains and sector/company performance analysis and benchmarking.
- ii. Enhancing the financial capacity of SMEs via specific subsidies/tax breaks for SMEs conditional on compliance with RBC guidelines and/or participation in an RBC agreement.
- iii. Further exploring the legal possibilities to circumvent competition law in case companies want to collaborate to make their sectors more sustainable. The current parliamentary bill 'Space for Sustainability' (Ruimte voor Duurzaamheid) connects to this recommendation.
- iv. Facilitate cross-border multi-stakeholder collaboration to address adverse impacts upstream in the value chains. The actors that contribute to or can influence adverse impacts on the ground are typically not confined to Dutch companies. The Government could explore alternative ways to facilitate collective projects, for example, by better integrating RBC agreements in its broader international development efforts.

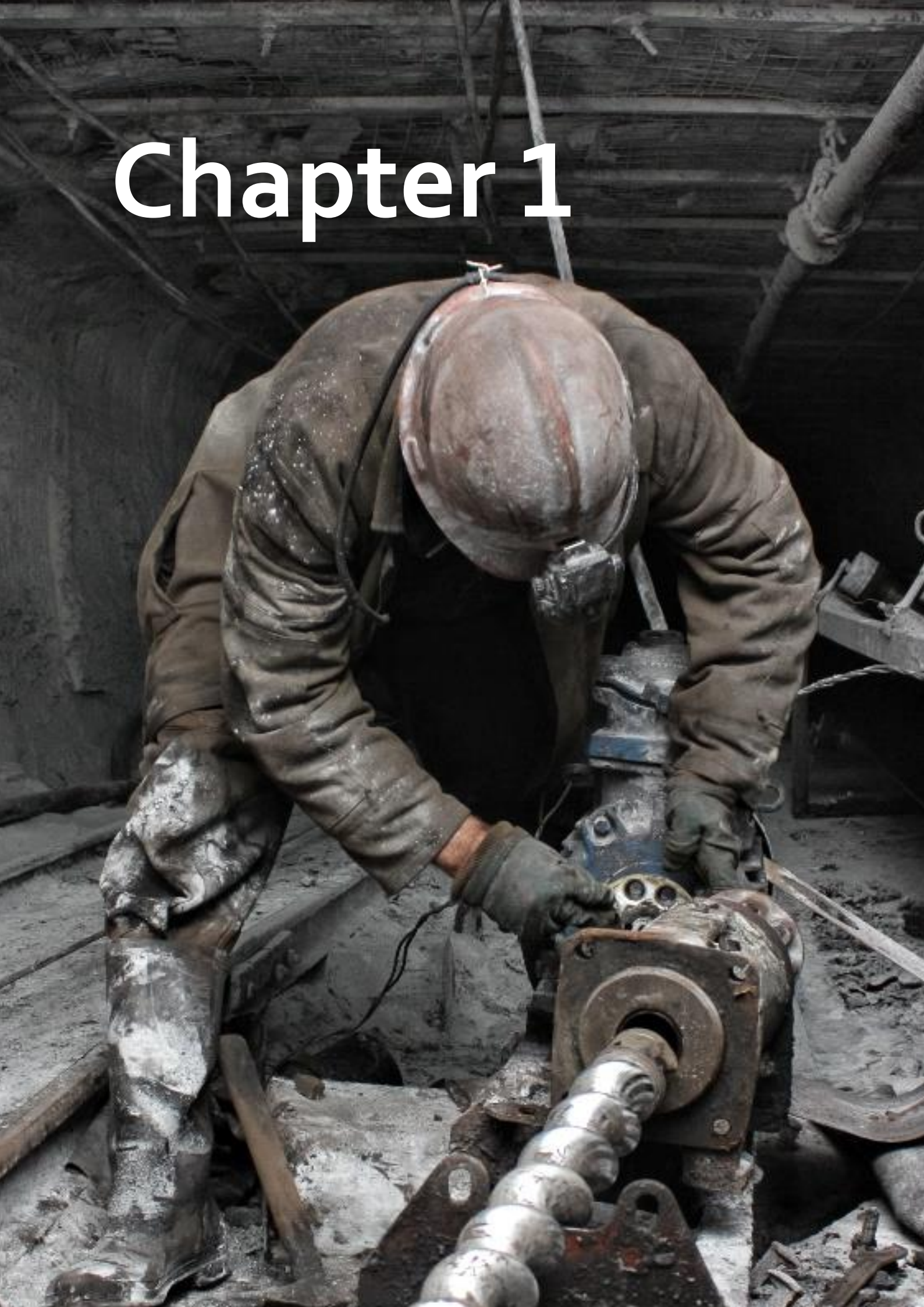
If effective, these additional instruments could further enhance the relevance and strengthen the added value of the RBC agreements. If companies have more incentives and capacity to invest in RBC, they are more likely to join an RBC agreement to seek collaboration and to benefit from the support structure, which, in turn, would enhance the potential for increasing leverage.

14. Set up a learning agenda for continuous learning and improvement

Achieving impact through company compliance with the RBC guidelines is an ambitious target and the RBC agreements are an innovative way to achieve this. The scientific and grey literature is particularly thin on how companies can be stimulated to comply with international RBC guidelines and the extent to which compliance leads to a reduction of adverse impacts. The Government should acknowledge this and initiate a learning trajectory parallel to the new RBC agreements policy. Key learning questions arising from this evaluation, but beyond its scope, include:

- i. What are the key assumptions underlying the OECD Guidelines and the UNGPs and to what extent can these be validated by existing evidence?
- ii. To what extent does doing well in RBC agreements translate into quality (or 'thorough') due diligence by companies?
- iii. Is the scarcity of evidence for actual impact merely a matter of more time needed—e.g. 5-10 years instead of the earlier anticipated 3-5 years until impact is visible—or are there structural barriers to impact that are difficult to overcome by a voluntary sector agreement?

Chapter 1



1 Introduction

This report presents the results of the evaluation of the multi-stakeholder sector Responsible Business Conduct (RBC) agreements (henceforth RBC agreements), which were concluded in 11 sectors of the Dutch economy during 2014 to 2019.

1.1 Objectives of the report

This evaluation was commissioned by the Dutch Ministry of Foreign Affairs—as part of the broader research project ‘Putting RBC Measures in Perspective’—and aims to support the Government in renewing its policy on international responsible business conduct (RBC).

Following the terms of reference (ToR), the evaluation aims to gain insight into the extent to which the RBC agreements advance the implementation of due diligence in conformity with the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Dutch high-risk sectors. This implies a focus on i) assessing the extent to which the RBC agreement policy is successful; ii) identifying the success factors and weaknesses of the RBC agreements; and iii) recommending necessary improvements to make the RBC agreements more effective and successful.

The evaluation covers three result levels, moving from outputs (activities of RBC agreements and connected parties/companies), to outcomes (implementation of due diligence by companies), and finally, to impacts (examples of improvement on the ground by addressing negative impacts in value chains).

The evaluation is operationalised based on 15 subjacent research questions, articulated in the ToR, to which this evaluation responds in detail (see Table 1 in Chapter 1.5).

1.2 The Dutch policy on RBC agreements

The Dutch Government communicated its policy with respect to sector-level RBC agreements in a letter to the House of Representatives in 2014.¹ The letter was a reaction to two reports it had commissioned. Firstly, the Sector Risk Assessment by KPMG (2014) identified 13 sectors in the Netherlands with high RBC risks: construction, chemicals, retail, electronics, energy, finance, wholesale, wood and paper, agriculture, oil and gas, textile and garments, food products, and metals. Secondly, the Social and Economic Council of the Netherlands (SER) proposed the development of sector agreements between companies and other stakeholders to commit to tangible results based on the OECD Guidelines for Multinational Enterprises (henceforth OECD Guidelines) and the UNGPs. Such agreements would also offer companies the opportunity to collaborate and increase their leverage to address complex RBC risks (SER, 2014).² Following these two reports, the Government expressed its expectation for the 13 high-risk sectors to initiate a trajectory in order to prevent and mitigate RBC risks in their value chains—preferably by coming to an RBC agreement.

The commitment to the UNGPs and the OECD Guidelines has been central to the Government’s RBC policy (IOB, 2019). According to the UNGPs, businesses have the responsibility to respect human rights (UN, 2011). This requires them to take steps to avoid causing or contributing to human rights abuses, through their own activities, and address such impacts when they occur. In situations where companies may be

¹ See the letter to Parliament by the Minister for International Trade and Development Cooperation and the Minister of Economic Affairs regarding ‘MVO Sector Risico Analyse’ on 19 November 2014 (Kamerstuk 26485-197, 2014).

² Leverage is understood as “the ability to effect change in the wrongful practices of the entity that causes harm” (OECD, 2011).

linked to human rights abuse through their business relationships, but without cause or contribution on their part, they are expected to use their influence in order to reduce the abuse risks.

The OECD Guidelines similarly recognise a duty of care of companies and offer principles for RBC in line with the UNGPs, which aim to prevent violations in the area of human rights, labour rights and the environment (OECD, 2011). A central concept in the OECD Guidelines is 'due diligence'. This is understood as "the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems" (OECD, 2011, p. 23).

Based on the notion of RBC as laid down in the OECD Guidelines and UNGPs, the Government aimed to have 10 RBC agreements signed by 2016. The goal of these RBC agreements is twofold (SER, 2014). First, they should lead to substantial improvement of specific risks for groups facing adverse impacts within three to five years. Second, the agreements should offer a solution for problems that companies cannot solve on their own. The following ingredients were recognised as important for the success of RBC agreements, according to SER advice: (1) solid due diligence; (2) clear governance and ownership; (3) meaningful stakeholder dialogue; and (4) clear agreements on monitoring, communication and dispute settlement (IOB, 2019).

To implement the RBC agreements' policy, the Government approached the sector associations (and other stakeholders) to discuss the outcome of the KPMG report and to promote the RBC agreements approach. In accordance with SER advice, the Government encouraged the sectors to come to an RBC agreement but left this decision, as much as possible, to the sectors themselves.

By May 2020, the following 11 sectors had signed an RBC agreement: coal (signed in November 2014), garments and textile (July 2016), banking (December 2016), forestry (March 2017), gold (June 2017), food products (June 2018), insurance (July 2018), pension funds (December 2018), natural stones (May 2019), metals (May 2019) and floriculture (July 2019).³ In addition, a sector agreement on vegetable proteins was signed (March 2017) but it already ended after two years.⁴ Two other sectors, agriculture and wind energy, are currently in the process of negotiating the terms of an RBC agreement.

1.3 Scope of the evaluation

This evaluation covers the 11 signed RBC agreements (except for vegetable proteins, as this was not part of the ToR).

The RBC agreements evaluation follows the ToR set by the Ministry of Foreign Affairs (2020). These ToR focus on the extent to which RBC agreements advance the implementation of due diligence in conformity with the OECD Guidelines and UNGPs in Dutch high risk sectors. While there are many more interesting and valid research questions on RBC agreements, these could not be taken into consideration in this evaluation.

Furthermore, as this is an evaluation of Dutch RBC agreements, it is important to note the following:

³The coal agreement ('steenkoolconvenant') is often not mentioned as part of the RBC agreements, as it was negotiated before the publication of the SER advice and is not based on a tripartite agreement. In this evaluation, it is included as an RBC agreement as the agreement aimed to promote RBC according to the OECD Guidelines and also included regular consultation with CSOs.

⁴ The reason stated was that the sector organisation Het Planeet, which was the signatory organisation on behalf of individual companies, announced that it had reached its organisational objective of promoting the consumption of vegetable proteins in the Netherlands and hence no longer saw the need to continue its work.

(a) This evaluation does not test, assess or otherwise evaluate the implicit Theory of Change (ToC) and assumptions underlying the OECD Guidelines and the UNGPs.

(b) This evaluation does also not assess or otherwise evaluate the due diligence processes and practices of individual companies participating in RBC agreements.

We consider that the evaluation results can be used by others to reflect on: (a) the usefulness, benefits and challenges of the OECD Guidelines and UNGPs; and (b) the due diligence processes and practices by companies adhering to RBC agreements.

1.4 Methodology⁵

Approach. The evaluation is based on a theory-based approach following the underlying ToC of the different RBC agreements (e.g. as developed by the agreements themselves or as reconstructed by the Policy and Operations Evaluation Department (IOB) of the Ministry of Foreign Affairs in its 2019 Evaluation of the Dutch Government’s policy on international RBC). The approach employed served to systematically identify and substantiate evidence of outputs, outcomes and (examples of) impact and establish the causal linkages to a specific RBC agreement. It also guided the evaluation in identifying the enablers and barriers for RBC agreements to move from input and outputs to outcomes and impact. It should be noted that six of the RBC agreements were signed in 2018 and 2019 and hence, only recently started their implementation (no impacts can be expected).

Data sources. For each RBC agreement, two main types of information sources were used: (1) *primary data* from key informant interviews with RBC secretariats, signatories and partners of the agreements (companies, ministries, NGOs, unions) and non-member organisations (NGOs, companies, other organisations); and (2) *secondary data* from RBC secretariats, public communications, reports and documents from the Ministry of Foreign Affairs and the Dutch House of Representatives, and third party studies. A total of 134 semi-structured interviews were conducted for the evaluation.

1.5 Reader’s guide

To facilitate reading of this report, the table below provides an overview of how the different report chapters are linked to the evaluation questions, according to the ToR.

Table 1. Report structure and research questions of the evaluation

Chapter	Content	Research questions (RQ)
Management summary	Reflection on the findings of the evaluation vis-à-vis the objectives of the evaluation, including recommendations for improvement of the RBC agreements’ policy.	What are the success factors and barriers to come to an RBC agreement and for the implementation of a RBC agreement?
1. Introduction	Introduction to the evaluation.	n/a
2. Dutch RBC agreements	Overview of Dutch RBC agreements, their goals, signatories & parties, and the sector-specific themes they aim to address.	RQ 4: To what extent are sector-specific themes, such as gender, living income, freedom of association and child labour part of the RBC agreements? If so, why? If not, why not?
3. Negotiating the RBC agreements	Analysis of the pre-agreement phase to identify the motives of the sectors to come to an agreement, to identify	RQ 5: To what extent do companies change their behaviour during the negotiation of RBC agreements?

⁵ See Annex 2 for the detailed methodology.

	determinants of successful RBC negotiations, and to investigate potential behaviour change of companies during the negotiations.	
4. Reach, coverage and scaling of the RBC agreements	Assessment of the reach of RBC agreements, including coverage of high-risk sectors, company participation in RBC agreement, market coverage, and (international) upscaling.	<p>RQ 12a: Which high-risk sectors did not take the initiative to come to an RBC agreement?</p> <p>RQ 1: What is the reach of the RBC agreements: how many companies are connected to the RBC agreements, which part of the sector is covered by the RBC agreements and what kind of companies are connected to the RBC agreements?</p> <p>RQ 15: Are there examples of scaling up of the RBC agreements to a European or international level and to what extent is it likely that scaling up to a European or international level is possible?</p>
5. Progress on due diligence in RBC agreements	Implementation of due diligence by companies adhering to RBC agreements, including monitoring & assessment, company progress, linking progress to RBC agreements, and facilitators and barriers for due diligence.	<p>RQ 3: To what extent have companies connected to the RBC agreements made progress with implementing due diligence, as described in the OECD Guidelines, UNGPs and the OECD Due Diligence Guidance?</p> <p>RQ 6: Which elements of the RBC agreements contribute to thorough due diligence by companies connected to the RBC agreements?</p>
6. Effects in the supply chain	Understanding leverage of Dutch companies in global value chains and progress made by RBC agreements in moving towards impact and (collective) solutions for problems in global value chains.	<p>RQ 2: What is the share of Dutch companies in global value chains? What can be said of the extent to which Dutch companies have leverage in their value chains?</p> <p>RQ 7: To what extent are concrete results reached on the sector specific themes?</p> <p>RQ 8: Do the RBC agreements provide examples of how due diligence has led to substantial improvement for possibly affected people and communities? If not, why? If so, how did the parties and the RBC agreement contribute?</p> <p>RQ 10: To what extent do companies need to have their due diligence in place before they can cooperate with the parties to address negative impacts?</p> <p>RQ 11: To what extent does the knowledge and expertise of the parties align with the prioritised negative impacts by companies (to make cooperation with other parties possible)?</p> <p>RQ 9: To what extent do the RBC agreements offer a solution for problems that companies cannot solve on their own?</p>
7. Costs, efficiency and financial sustainability of RBC agreements	Overview of the costs for management and implementation of RBC agreements.	<p>RQ 13: Costs in terms of financial contributions</p> <p>RQ 14: Costs in terms of in-kind contributions and cost-benefit analysis.</p>
8. High-risk sectors without an RBC agreement	Tracing due diligence compliance and progress in high-risk sectors without an RBC agreement: oil & gas, chemicals, and electronics.	<p>RQ 12b: Why did some high-risk sectors not take the initiative to come to an RBC agreement?</p> <p>RQ 12c: What have the companies in these sectors done to improve their implementation of the OECD Guidelines and UNGPs?</p>

Chapter 2



2 Dutch RBC agreements

2.1 Key findings

- ❖ The Dutch RBC agreements have emerged over a period of five years since 2014. The SER has been, often behind the scenes, the key driver of the agreements which is reflected in style and content of the agreements, except for coal and forestry.
- ❖ The coal agreement was the first to be concluded in November 2014. TruStone is the latest agreement from October 2019 and is also the first agreement to be concluded with another country (the Flemish part of Belgium). All agreements are signed for a time span of 3-5 years.
- ❖ RBC agreements aim to promote international RBC, following the OECD Guidelines and the UNGPs, and lead to positive impact for groups or people that (potentially) experience adverse impacts (often within a specified timeframe of 3-5 years).
- ❖ Coal is the only agreement without the participation of NGOs, unions and sector associations. All other agreements have a multi-stakeholder character. TruStone is the only agreement with municipalities as signatories.
- ❖ The RBC agreements with the highest number of signatory/formally adhering companies are insurance (171 companies) pension funds (81), and garments and textile (69). The agreements with the lowest number are metals and coal.
- ❖ 21 different NGOs participate in RBC agreements. The average number of participating NGOs per agreement is 3.6, ranging from 0 (coal) to 6 (insurance and pension funds). Many NGOs participate in more than one RBC agreement simultaneously.
- ❖ 6 out of 11 RBC agreements have selected sector-specific themes to be addressed (2 agreements have not yet selected their themes). Socio-economic themes feature more prominently than environmental themes: 'living wage' and 'child labour and children's rights' are, by far, given the most priority across the agreements.
- ❖ Theme selection largely reflects the negotiation leading up to the RBC agreements and is thus affected by divergence in expectations and priorities of parties and the need to accept compromises. Key drivers for theme selection are risk salience, pragmatism as well as bargaining power of parties involved.

2.2 Overview of signed agreements

Nine of the signed RBC agreements (all except coal and forestry) have been developed with SER support and are comparable in design and setup (Table 2). The SER-supported agreements are typically written in a 'legal style', precise in their description of roles and responsibilities of different parties, which conforms to the Government requirements on covenant texts. The other two agreement texts, i.e. on coal and forestry, resemble a memorandum of understanding (MoU).

The SER functions as the secretariat for all but three agreements. The floriculture agreement is facilitated by the Sustainable Trade Initiative (IDH), the forestry agreement by Stichting Bewust met Hout and the coal agreement had no secretariat (limited administrative duties were rotated between the parties).

All RBC agreements are set up for a specified timeframe during which signatory parties are required to implement the commitments made in the agreements; the majority of agreements run for five years.

Shorter timeframes are observed for pension funds (4 years), forestry (3.9 years), banking and floriculture (both 3 years).

The TruStone (natural stones) initiative is the only bilateral RBC agreement between the Netherlands and Flanders (Belgium).

Table 2. Basic characteristics of RBC agreements

RBC Agreement	Signing date	Start implementation	Duration (years)	Secretariat	Form/style	# of pages
Banking	October 2016	December 2016*	3	SER	SER Style	52
Coal	November 2014	November 2014*	5	-	MoU Style	6
Floriculture	July 2019	September 2019	3	IDH	SER Style	65
Food products	June 2018	June 2018	5	SER	SER Style	72
Forestry	March 2017	March 2017	3.9	Bewust met Hout	MoU Style	22
Garments & textile	July 2016	July 2016	5	SER	SER Style	102
Gold	June 2017	July 2017	5	SER	SER Style	68
Insurance	July 2018	July 2018	5	SER	SER Style	66
Metals	May 2019	July 2019	5	SER	SER Style	77
Pension funds	December 2018	January 2019	3	SER	SER Style	75
TruStone	May 2019	October 2019	5	SER	SER Style	69

Explanation: *RBC agreements finalised. The coal agreement ended in November 2019 and the banking agreement ended in December 2019.

2.3 Goals of RBC agreements

RBC agreements aim to promote international RBC and lead to an improvement in social and environmental conditions (Table 3). These goals convey an ambition for positive impact for groups or people that (potentially) experience adverse impacts. A number of agreements specifically emphasise that they seek to offer a collective solution to problems that businesses are unable to solve on their own.

Table 3. Aims and objectives of RBC agreements

RBC agreement	Aims and objectives
Banking	To achieve a material positive impact for people (potentially) facing adverse human rights impacts (related to the activities of clients of the Dutch banking sector) and to search for solutions to address problems that an adhering bank cannot solve by itself.
Coal	To improve social and environmental conditions in the international coal supply chain.
Floriculture	Within 3 years, to achieve substantial improvement for people who experience possible negative effects in relation to the floriculture sector.
Food products	Achieve substantial steps in the food chains within an ambitious and realistic period of 3-5 years for groups that experience negative effects [...] and] collectively solve problems which companies cannot individually address.
Forestry	The ambition of this agreement is to stimulate sustainable forest management and to implement international RBC in the timber sector by: <ul style="list-style-type: none"> • Further examining to what extent the European Timber Regulation (EUTR) and current certification initiatives address IRBC risks throughout the entire timber chain. • Identifying and undertaking measures to structurally address unhedged IRBC risks. • Identifying and undertaking actions that simplify the administrative rules for the use of sustainably produced timber.

	<ul style="list-style-type: none"> • Investigating why the business case for sustainable forest management in many instances is still weak, and on the basis of the results make a joint effort to strengthen the business case for sustainable forestry. • Increasing market demand for sustainably produced and FLEGT-certified timber and realising the ambition of making the use of this timber become a natural point of departure for all relevant stakeholders in the Netherlands.
Garments & textile	<ol style="list-style-type: none"> 1) To achieve substantial progress within 3-5 years towards improving the situation for groups experiencing adverse impacts in respect of specific risks in the garment and textile production or supply chain; 2) To provide individual enterprises with guidelines for preventing their own operation or business relationships from having a (potential) adverse impact in the production or supply chain; 3) To develop joint activities and projects to address problems that enterprises in the garment and textile sector cannot resolve completely and/or on their own.
Gold	To achieve a material positive impact in the international gold supply chain and reduce (potentially) adverse human rights impacts and/or negative environmental impacts.
Insurance	To make a positive impact on themes relating to the environment, social conditions and governance (ESG) and strive to combat any violations thereof.
Metals	<ol style="list-style-type: none"> 1) To conduct individual company due diligence and collective due diligence; 2) To advance responsible secondary materials supply chains; 3) To undertake collective actions to address systemic risks of human rights and environmental violations, and to increase collective leverage through sign-on and national and international upscaling.
Pension funds	The purpose of this agreement is for Participating Pension Funds to fulfil the expectations arising for pension funds under the OECD Guidelines and the UNGPs. [‘Deep Track’:] to develop forms of cooperation aimed at increasing the leverage of participating pension funds in their engagement with listed investee companies with a view to preventing, mitigating and/or remediating (possible) adverse impacts by these companies.
TruStone	<ol style="list-style-type: none"> 1) To significantly improve specific RBC risks in the production or supply chain of the natural stone industry within a 3- to 5-year period for groups experiencing adverse impacts; 2) To offer a collective solution to problems that companies are unable to solve entirely on their own (see 2.2 for priority themes); and 3) To offer individual companies tools to prevent, reduce or eliminate any real or potential adverse impact of their own business activities or those of their suppliers or business partners in the natural stone production or supply chain.

With regard to RBC and due diligence, RBC agreements follow the OECD Guidelines and the UNGPs (Table 4). Most agreements also refer to additional international guidance documents to give shape to companies’ behaviour, especially the UN Sustainable Development Goals and OECD sector or supply-chain specific guidance. A number of agreements also pay explicit attention to the fundamental labour standards by the International Labour Organization (ILO).

Table 4. Reference to international guidance on RBC

	UNGPs	OECD Guidelines	UN SDGs	ILO Labour Standards	OECD sector / chain specific standards	UN Global Compact principles	EU specific regulation	IFC Performance Standards	Other
Banking									FPIC, VGGT, Equator Principles
Coal									VPs, Bettercoal
Floriculture							EU pesticide regulation		
Food products									
Forestry							EU Timber Regulation		FSC, PEFC
Garments & textile									
Gold							EU Conflict Minerals Reg*		
Insurance									UNPRI
Metals							EU Conflict Minerals Reg		
Pension funds							EU Action-plan Sust. Finance		UNPRI
TruStone									FPIC, VGGT

Explanation: * denotes reference to potential regulation

2.4 Signatories & parties

With the exception of the coal agreement, RBC sector agreements have a multi-stakeholder character, as also advised by the SER (2014)—including sector associations and/or companies, NGOs, unions and Dutch Government ministries. These are the so-called 'signatory parties', all of which are explicitly mentioned in the agreements with specific roles and tasks (Figure 1). There is no participation of stakeholders from producing countries.

The TruStone agreement involves participants from the Netherlands and Belgium (currently 16 companies from each country).

The coal agreement was concluded between five companies (one company dropped out in 2015) and two ministries. Civil society organisations (CSOs), i.e. NGOs and unions, were invited to yearly stakeholder meetings and participated in a number of country visits, but were otherwise not involved in the agreement implementation.

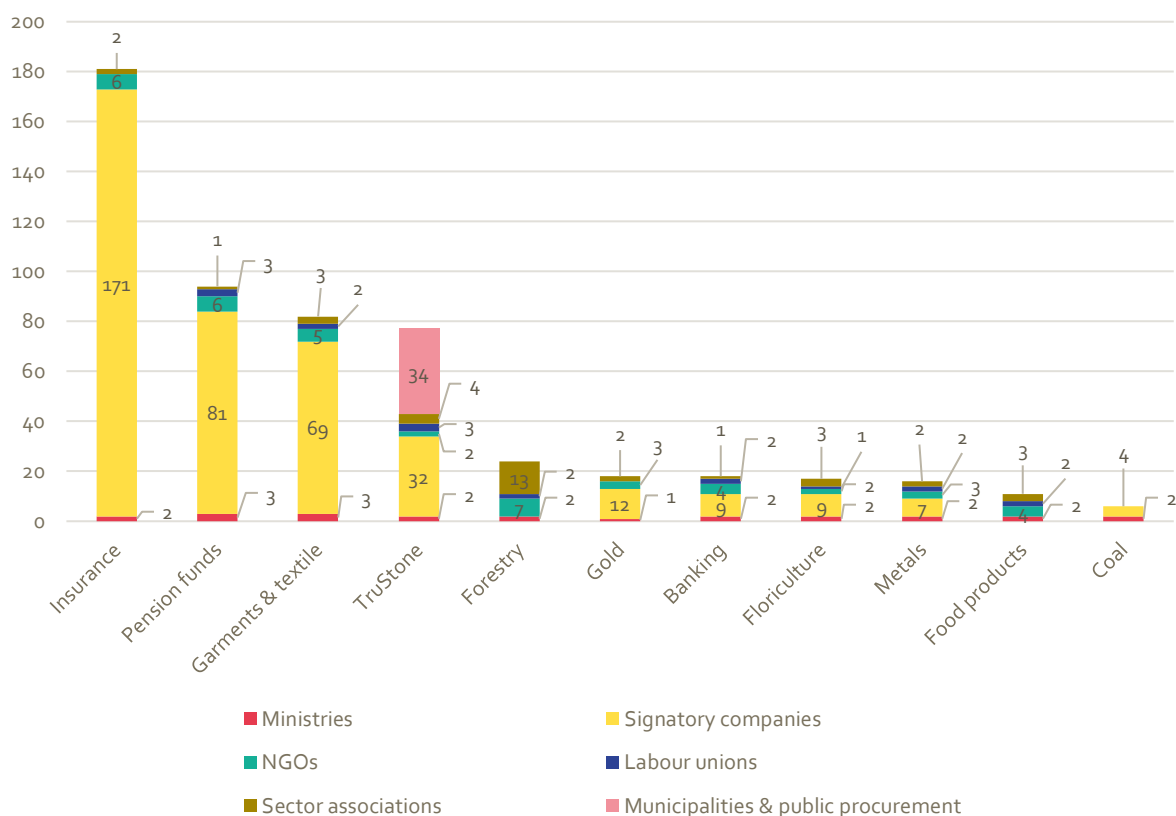


Figure 1. Signatory and formally adhering parties of RBC agreements

Status: May 2020. With concluded agreements: status at the end of the agreement.

Explanation: 1) IDH is counted as an NGO. 2) For the floriculture agreement, Royal FloraHolland is counted under sector associations. 3) For TruStone, both Dutch and Flemish parties are listed. 4) For the insurance agreement, three insurance companies signed a separate declaration of intent; the remaining companies fall directly under the different sector associations (here referred to as 'formally adhering').

2.4.1 Government

The Ministry of Foreign Affairs is a signatory to all agreements. All but the gold agreement have additional ministries as signatories. For the financial sector agreements, this is the Ministry of Finance, whereas for pension funds, the Ministry of Social Affairs and Employment is a signatory. Coal and metals are signed by the Ministry of Economic Affairs. For forestry, food products and floriculture, the Ministry of Agriculture and Nature is the additional signatory.

The Government primarily plays an advocacy role in promoting the agreement and mobilising international leverage (e.g. awareness and support for the agreements in EU/UN/OECD). The Government also commits to mobilising its network of embassies for outreach and to identifying any issues and/or opportunities relevant to the agreement. Furthermore, in some agreements, the Government also commits to adhering to the due diligence and/or other frameworks in its own procurement processes. The Government has no formal role in assessing compliance with the agreements, as the agreements are voluntary, legally non-binding and do not entail legislation.

In the TruStone agreement, five Dutch municipalities and procurement authorities are currently listed as signatories, in addition to 29 Belgian ones. These participate in their function as 'consumers' of natural stone (public procurement), to stimulate RBC by companies participating in public tenders.

2.4.2 Unions

All agreements (except coal) are signed by FNV (Netherlands Trade Unions Federation) (which, however, recently left the gold and insurance agreements).⁶ Seven agreements are also signed by CNV (Christian Trade Unions in the Netherlands). The agreements with three signatory unions are pension funds (also including VCP, the Trade Union Federation for Professionals) and TruStone (as this is a bilateral agreement which also includes a Flemish union).

Some agreements, but not all, include a specific section on the role of unions and NGOs, which are quite similar. The role involves the mobilisation of their respective networks for advocacy and action on specific themes and to provide thought-leadership and input in working groups and projects on specific CSO themes.

2.4.3 NGOs

A total of 21 different NGOs participate across 10 RBC agreements. Coal has no NGOs participating, but three NGOs closely followed the agreement. The average number of participating NGOs is 3.6, with low participation for coal (0), floriculture (2) and TruStone (1 Dutch plus 1 Belgian NGO), and high participation for insurance (6), pension funds (6), forestry (5), and garments and textile (5). Thirteen (13) NGOs participate in one RBC agreement, 11 NGOs participate in two agreements and five (5) NGOs simultaneously participate in three agreements.

NGOs focus on different themes and can be grouped in six different categories:

1. Generic, typically larger, NGOs working on a variety of themes in emerging markets/developing countries (6);
2. NGOs with a focus on child labour and children's rights (4);
3. Human rights NGOs (5);
4. Nature conservation NGOs (3);
5. Animal welfare NGOs (2);
6. Sustainable trade organisation (1).

Table 5 presents the number of NGOs in each of these categories participating per agreement. This shows that the most common NGO focus is child labour and human rights.

⁶ FNV indicated having left the insurance sector agreement due to capacity constraints. In the case of the gold agreement, FNV lacks sufficient members in the gold sector and hence the support and manpower to contribute to the agreement.

Table 5. NGO participation in RBC agreements

Focus NGO	Total	Generic (development)	Child labour	Animal welfare	Sustainable trade	Human rights	Nature conservation	NGO-company ratio
# of different NGOs	21	6	4	2	1	4	3	
Banking	4	1	1			2		4:9
Coal	0							0:4
Floriculture	2	1					1	2:9
Food products	4	2	1		1			n/a
Forestry	5	1			1	1	2	n/a
Garments & textile	5	1	2	1		1		5:69
Gold	3	1	2					3:12
Insurance	6	1	1	1		2	1	6:171
Metals	3		2				1	3:7
Pension funds	6	1	1	1		2	1	6:81
TruStone	2					2		2:36
Total participation	40	9	10	3	2	10	6	

2.4.4 Companies

There are different ways that companies can be part of RBC agreements—either directly (by having signed the agreement or an associated declaration of intent) or indirectly (through their sector associations).

Company participation, and reporting of companies on their activities, is at the core of most agreements and different sections provide detailed frameworks for company obligations under the agreements, mostly regarding reporting on due diligence. Participation in projects and working groups is voluntary for most agreements, but is encouraged.

2.4.5 Sector associations

Most RBC agreements include up to three sector associations and only forestry stands out with an exceptionally high number (13). It is important to note that two agreements (forestry and food products) have no direct signatory companies. The insurance sector agreement is signed by sector associations on behalf of their members, but there are also three individual insurers that have signed a declaration of intent. Coal has no sector association that signed the agreement.

Only a few agreements contain a specific section describing the role of sector associations, but they are referenced in sections on growing the participant base (companies) for 'increasing leverage'. For the agreements where companies do not sign directly, sector associations take on an active role in reporting and monitoring.

2.5 Sector-specific themes

In most sectors, parties have agreed to pay particular attention to specific RBC themes in the sector's supply chain. In the case of garments and textile, food products, floriculture, and TruStone, the agreement documents identify specific themes. The insurance agreement combines a broad focus on RBC risks included in the OECD Guidelines and UNGPs with a particular emphasis on themes not considered sufficiently covered by these international instruments, as well as with yearly 'do good' priority themes.

related to the SDGs and the 2030 Agenda. The banking agreement has a broad thematic focus on human rights, which can thus be considered a sector-specific theme. In the case of pension funds and metals, themes were deliberately not identified in the pre-agreement phase but will be selected during agreement implementation based on emerging results of risk analyses and due diligence efforts of participants.

Three agreements do not focus on sector-specific supply chain themes. In the case of coal, the agreement has a particular country focus (Colombia), while the forestry agreement focuses on risks at the source of the timber chain (i.e. deforestation and climate change, land rights and negative effects for local communities). The gold agreement has no pre-selected themes but follows the OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which particularly elaborates on conflict financing and use of mercury and child labour in artisanal and small-scale mining (OECD, 2016). Table 6 shows which agreements have selected sector-specific themes, and, for those that have, how many.

Table 6. Selection of sector-specific supply chain themes of RBC agreements

RBC Agreement	None	Themes selected	Yearly priority theme	Theme selection <i>tbd</i>
Banking		(1*)		
Coal				
Floriculture		(7)	(2***)	
Food products		(2)		
Forestry				
Garments & textile		(9)		
Gold				
Insurance		(5**)	(1)	
Metals				
Pension funds				
TruStone		(8)		

Explanation: * broad focus on human rights within which specific rights issues are identified. ** five themes not considered sufficiently covered by OECD Guidelines and UNGPs. *** 2 priority themes for year 1 out of the 7 priority themes

2.5.1 Which sector-specific themes are part of the RBC agreements?

Table 7 depicts sector-specific supply chain themes of the six agreements that have selected themes. Between agreements, themes are named slightly differently but can—based on subject matter and content—be clustered into a total of 16 sector-specific themes. Table 8 shows these 16 themes according to nature of theme, how they correspond to two broad dimensions of sustainable development (socio-economic or environmental), as well as the number of agreements that focus on each particular theme.

Table 7. Identified sector-specific themes of seven RBC agreements

RBC Agreement	Sector-specific themes
Banking	Human rights
Floriculture	Living wage, women's rights, land rights, water usage, climate change, health and safety of workers and environmental impact of plant protection products Priority themes for year 1: Living wage and impact of plant protection products
Food products	Living wage and climate change
Garments & textile	Discrimination and gender, child labour, forced labour, freedom of association, living wage, health and safety of workers, raw materials, water pollution and use of water, chemicals and energy, and animal welfare
Insurance	Animal welfare, children's rights, land rights, climate change, controversial weapons and trade in controversial weapons Priority ('do good') theme for year 1: Climate change and energy transition
TruStone	Discrimination and gender equality, child labour and children's rights, forced labour, living wage, right to organise, occupational health and safety, land rights, and the living environment (including air, soil and water pollution)

Table 8. Sector-specific themes according to development dimensions and nature of theme

	Socio-economic	Environmental
Cross-cutting	<ul style="list-style-type: none"> Discrimination and gender equality (2) Human rights (1) 	
Thematic	<ul style="list-style-type: none"> Living wage (4) Child labour and children's rights (3) Occupational safety and health (3) Land rights (3) Freedom of association (2) Forced labour (2) Animal welfare (2) Women's rights (1) 	<ul style="list-style-type: none"> Water pollution and use of water (3) Climate change (incl. energy transition) (2) Chemicals and energy (1) Environmental impacts of plant protection products (1) The living environment (including air, soil & water) (1)
Intervention related	<ul style="list-style-type: none"> Financing of conflict (1) 	

Explanation: The table includes how many agreements focus on each theme.

All agreements, apart from banking, address both socio-economic and environmental themes. However, environmental themes clearly feature less prominently than socio-economic ones (8/32 versus 24/32). This also reflects the type of NGOs participating in RBC agreements, as highlighted in Chapter 2.4. Of the socio-economic themes, a few are of a cross-cutting nature, such as discrimination and gender equality, while the large majority are of a thematic nature—e.g. living wage and climate change. Another topic, i.e. 'financing of conflicts' can be best defined as intervention related. Across the agreements, the most frequent themes are concerned with labour rights, i.e., 'living wage' (4) and 'child labour and children's rights' (3). Other ILO enabling rights are less prominent. For example, only two agreements have identified freedom of association as a specific theme and none work on collective bargaining. Notably, across the RBC agreements, only two have selected gender equality as a cross-cutting concern, even though this is indicated in the KPMG risk analysis (2014) as a priority for all sectors.

2.5.2 Elaboration and operationalisation of sector-specific themes

The level of elaboration of themes varies between agreements. In the case of banking, the agreement's broad human rights focus is elaborated in the context of specific value chain mappings—palm oil, cocoa, gold and oil and gas—that identify a range of human rights issues. The theme selection of the gold agreement is presented on the SER website but not explained in any detail in the agreement document or

otherwise. In the case of the garments and textile, food products, floriculture, and natural stone sectors, the agreement documents provide significant detail on the importance of each theme and the rationale for its selection. In addition, TruStone and the garments and textile agreement offer elaborate guidance on recommended measures for companies, with the garments and textile agreement even setting concrete individual and joint targets on the themes.

Beyond the due diligence efforts of individual parties, the themes are collectively operationalised through agreement working groups and collective projects. Eight agreements have established thematic working groups. Collective projects on thematic themes have also been initiated by four agreements (see Table 9). The majority of working groups and projects address socio-economic themes, with ‘child labour’ and ‘living wage’ as the most frequent themes. The banking and the garments and textile agreements have working groups that cover all or a selection of themes, while the pension funds and metals agreements have established working groups that will select themes during agreement implementation. With regards to the pension agreement, a working group will develop a theme overview to support pension funds in accessing information on themes that have emerged as risks based on due diligence or have been prioritised by the parties. In the case of the metals agreement, a working group on ‘collective actions and upscaling’ is responsible for selecting specific themes for additional attention.

Table 9. Existing working groups and collective projects on sector-specific themes (May 2020)

RBC Agreements	Working groups	Projects
Banking	1: Value chains with severe human rights risks ⁷	
Floriculture	3: Living wage; human impact of plant protection products; environmental impact of plant protection products	
Food products	2: Collective projects; due diligence support	1: Living wage
Forestry	1: RBC risks**	
Garments & textile	6: Animal welfare; child labour & freedom of association; living wage; water pollution, use of chemical, energy & water; complaints & grievance mechanism; social Themes**; due diligence	3: Child labour and freedom of association; living wage; pollution prevention, resource use and health & safety
Gold		1: Child labour
Insurance	2: Themes*; annual theme	
Metals	1: Collective actions & upscaling***	
Pension funds	1: Theme overview***	
TruStone	2: Forced labour; occupational health & safety	1: Child labour

Explanation: Table only includes working groups related to sector-specific themes, others are excluded.

* Working group for five themes not considered sufficiently covered by OECD Guidelines and UNGPs. ** Working group covering all sector specific themes. *** Working group that will select themes during agreement implementation based on emerging results

2.5.3 Motivation and drivers for sector-specific themes

Theme selection largely reflects the negotiation leading up to the RBC agreements and is thus—as will be discussed in Chapter 3.2—affected by divergence in expectations and priorities of parties and willingness

⁷ The banking agreement has established a working group to analyse value chains that are characterised by severe human rights risks and impact. A methodology for the analyses proposed the identification of specific human rights issues or themes, such as the right to an adequate standard of living or living wage, child labour, forced labour, land rights, gender inequality, occupational health and safety, land & water related rights, community impacts, governance, impacts on vulnerable groups such as indigenous peoples.

to accept compromises. Evidence of salient RBC risks in a sector contributes to theme selection without specifying a prioritisation of risks, as this was recognised to emerge out of individual due diligence efforts.

In the garments and textile and natural stone sectors, CSOs brought attention to negative impacts of severe rights violations in production countries and, on this basis, were successful in getting support for a range of thematic priorities—as spelled out in the agreement documents. Risk salience, however, is not the only driver of theme selection. In the case of the floriculture sector, out of seven selected themes, two were identified as priority themes for the first year. Whereas CSOs appear to have preferred to give equal attention to all seven themes, narrowing down reflects a pragmatic approach in view of limited resources and time available to address all issues at once. Indeed, theme selection is often the result of a lengthy negotiation between parties with different interests. During negotiations, parties use different arguments for focused attention to particular risks depending on their own thematic interests—e.g. as in the case of NGOs and labour unions—or incentives to keep control over concrete commitments to due diligence—e.g. companies. The results of theme negotiations thus reflect the bargaining power of different parties. With regard to the banking agreement, the broad thematic focus on human rights was a specific request by banks as, they had successfully argued, other RBC-related banking sector initiatives sufficiently focus on environmental concerns. While this was contested by CSO participants, the banks prevailed with backing from Government parties. For pension funds and metals, themes were not specified in the agreement.

For the pension funds and metals agreements, themes were not specified in the agreement as parties did not want to prescribe a particular thematic focus but instead give the opportunity for funds/companies to prioritise risks. In the case of the metals agreement, once the first collective due diligence action plan has been completed, parties plan to select two themes. Based on the expressed wish of sector parties, these agreements thus, in principle and similar to the insurance agreement, give attention to all themes mentioned in the OECD Guidelines. Apparently, CSOs advocated unsuccessfully for theme selection but, in the end, agreed to a broader focus.

In conclusion, drivers for theme selection are a combination of risk salience, pragmatism and the bargaining power of parties involved in the negotiation. Evidently, there can be tensions between these drivers, especially between risk salience (from the chain perspective) and interests of parties involved. This suggests that final agreement on theme selection depends on who has the most bargaining power in particular sectors vis-à-vis specific themes.

Chapter 3



3 Negotiating the RBC Agreements

3.1 Key findings

- ❖ Many companies and sector associations expressed they were intrinsically motivated to take their (social) responsibility and to prevent and mitigate negative social or environmental effects linked to their operations.
- ❖ The RBC agreements are generally viewed as an interesting proposition by the sector associations as it fosters multi-stakeholder collaboration. The RBC agreements allow companies to use the resources of the SER, the Government, and CSOs, including specific expertise, access to networks, and financial support by the Government and SER. The agreements also foster collaboration between companies, which can lead to efficiency gains and more leverage in supply chains.
- ❖ The motivation of sectors/companies to come to an RBC agreement is enhanced by a combination of Government pressure and public pressure. The RBC agreements are viewed as a way to manage the sector's reputational risk and to potentially pre-empt legislation on international RBC.
- ❖ Pre-existing initiatives on sustainable supply chains in the sector can be a catalyst as well as a barrier for the initiation of the RBC agreements.
- ❖ A key bottleneck for negotiations on all RBC agreements lies in the diverging expectations between companies and CSOs on what an RBC agreement constitutes—whether or not it functions as a platform to hold companies accountable for progress on due diligence and the misconduct signalled in their supply chains—and the desired ambition level.
- ❖ The negotiations reveal a power imbalance between the sector and CSOs in favour of the sector.
- ❖ The power imbalance between CSOs and the sector calls for a larger role for the Government as a balancing weight in the negotiations. The Government has substantial bargaining power as they can decide not to finance the agreement if it does not meet their minimum quality standards (e.g. in terms of ambitions, the level of transparency or accountability, or regarding concrete deliverables). The Government has, however, generally shied away from this role.
- ❖ Strong facilitation of the negotiation process is broadly acknowledged as key to bridging the gap in expectations, to creating a common understanding of (common) interests, and to building trust.
- ❖ Trust can be a substitute for contractual safeguards and can thus smoothen the negotiations as well as the implementation of the agreement. Nonetheless, trust has shown to be fragile in negotiations in view of often competing interests and objectives.

3.2 What drives the emergence of the RBC agreements?

Below we discuss the various factors that drove the sector associations' decision to start negotiations for an RBC agreement.

3.2.1 Government pressure

While the Dutch Government adopted the SER advice (SER, 2014) to leave the process of coming to an RBC agreement to the sectors themselves, in practice, the Government stimulated different sectors to different degrees.⁸ For some agreements—such as for coal, gold, textile, and banking—interviewed stakeholders argued that the pressure by the Ministry of Foreign Affairs was decisive in the initiation of the agreement (see below).

The energy companies involved in the coal agreement had initially announced that they would focus on the European-wide Bettercoal initiative as their main platform for supply chain responsibility (E.ON et al., 2013) and they only decided to start the negotiation with the Ministry after ongoing public and political pressure.

A key driver of the emergence of the gold agreement was the Ministry's Special Envoy for Natural Resources at the time, who had a strong attachment to—and deep knowledge of—the sector and a strong reputation which helped convince parties to join the scoping phase. The sector itself had, however, little intrinsic motivation to come to an agreement. Companies in the gold sector argued that the vast majority of gold used in the Netherlands is recycled and not imported, and that the Dutch sector cannot impact the mining operations due to its small size and the very indirect linkages with mining operations.

Although the willingness by the sector associations in the textile sector to come to an agreement was high, the Government played an important role. The textile sector was one of the first sectors to initiate RBC agreement negotiations, based on the sector's Action Plan from 2013, called 'Plan van Aanpak Verduurzaming Nederlandse textiel- en kledingsector'. The Action Plan was developed by the three sector organisations, Inretail, Modint and VGT, as a response to the growing demand of CSOs to improve working conditions in the garment and textile industry (Modint et al., 2013). Specifically, the Action Plan formed a direct reaction to several tragic events that took place in the early 2010s, such as the Dhaka garment factory fire in 2012 and the Rana Plaza collapse in 2013. These incidents caused large public pressure on the industry to address the hazardous working conditions in manufacturing locations. In addition to this public pressure, there was also political pressure: in response to child labour reports in the garment and textile industry (SOMO & ARISA, 2012), several members of Parliament in 2012 and 2014 requested the Government to make agreements with the textile sector with the aim of improving transparency and banning child labour from supply chains. Minister Ploumen supported the motion by Parliament and urged the sector to increase their efforts on an Action Plan. As the Action Plan was published in 2013, the emerging contours of the new RBC agreement policy became increasingly visible and Minister Ploumen expressed her intent to conclude an agreement with the textile sector (Modint et al., 2013). According to the interviewees, this public commitment by Minister Ploumen convinced many of the companies to sign the RBC agreement.

Finally, several participants in the banking agreement state that the emergence of the banking agreement was predominantly a response to a specific Government request. In December 2014, Minister Ploumen communicated in a press release that she wanted to see a voluntary agreement on corporate social responsibility within two years in the Dutch banking sector (Government of the Netherlands, 2014). She stated, "Whether you're a clothing company or an entrepreneur in the food industry, you depend on banks for investment and loans. When banks practise corporate social responsibility, it automatically impacts on other sectors. That's why it's so important to press ahead with this voluntary agreement."

⁸ In its advisory report, SER recommends "in order to be most effective it is important that the initiative to come to sector agreements starts, as much as possible, with business. Where this initiative does not come about, other parties will want to incentivise business sectors to take initiative" (SER, 2014, p. 21).

3.2.2 Intrinsic motivation

Many companies and sector associations expressed that they were intrinsically motivated to take (social) responsibility and to prevent and mitigate negative social or environmental effects linked to their operations. Besides this intrinsic motivation, several more extrinsic reasons why sector associations have decided to come to an RBC agreement are identified below, based on different stakeholder perspectives.

3.2.3 Public pressure and reputation management

The RBC agreements are seen as a way to manage reputational risks, particularly in those sectors where there is increased media attention, CSO campaigns, and political discussion. This finding is in line with a recent large-scale survey on due diligence implementation in the EU, which found that 'reputational risks' was the top incentive for companies to implement due diligence (Smit et al., 2020). An RBC agreement can reduce reputational risks by offering a 'safe platform' where CSOs and Government can discuss misconduct in supply chains with the sector—reducing the need for public campaigning. In case public allegations of misconduct in supply chains do take place (e.g. by media, CSOs, or members of parliament), companies can manage the reputational impact by referring to the RBC agreement as a platform through which these issues are addressed.⁹

The role of public pressure in stimulating sector associations to start the negotiations, and for companies to join the agreement, is particularly observed for coal, floriculture, food, textile, TruStone and gold (see Table 10 for a snapshot of the public pressure preceding these RBC agreements). During the pre-agreement phase of the TruStone agreement, for example, The Dark Sites of Granite report was published, which claimed that a number of Dutch natural stone companies sourced from quarries that used forced labour and child labour (Glocal Research et al., 2017). Due to this 'naming and shaming', some companies joined TruStone to avoid further negative publicity. Other sectors, such as food, floriculture and textile, have a much longer history of CSO campaigning and media attention that stimulated these sectors to come to an agreement.

⁹ See, for example, the reaction of the sector association for the food retail sector (CBL) to allegations by the TV-programme 'Keuringsdienst van waarde' regarding labour rights violations in the tomato supply chain: <https://www.cbl.nl/reactie-op-uitzending-keuringsdienst-van-waarde-over-uitbuiting-in-zuid-europa/>

Table 10. Snapshot of public pressure by sector

Sector	Examples of media attention and CSO campaigns
Banking	Fair Finance Guide
Coal	PAX campaign 'Stop Blood Coal'
Floriculture	Hivos campaign 'Small Change, Big Deal'; Zembla documentary 'Dutch roses from Ethiopia'
Food products	Oxfam campaign 'Behind the Bar Codes'
Forestry	Greenpeace report 'CCTs Timber Trade from Cameroon to Europe'; Probos report 'Import of secondary timber products by the EU28' commissioned by WNF; 'Fout Hout' - TV show 'Radar' (2015)
Garments & textile	Collapse of textile company Rana Plaza in Bangladesh; report by SOMO and LIW 'Flawed Fabrics'.
Gold	IUCN documentary 'Behind the Dirty Gold'; SOMO reports 'Gold from children's hands' and 'No Golden Future'
Insurance	Fair Finance Guide
Metals	SOMO report 'Cobalt Blues'
Pension funds	Fair Finance Guide
TruStone	Report by SCL, ICN and Kerk in Actie 'The Dark Sites of Granite'; De Standaard (2015): 'Gentse kasseien komen uit illegaal mijngebied'

3.2.4 Pre-empting legislation

For several sectors, an identified motive to come to an RBC agreement was to demonstrate that companies can voluntarily comply with the international RBC guidelines in order to pre-empt legislation on due diligence. The emergence of the metals agreement, for example, was partially driven by the EU regulation on responsible sourcing of conflict minerals, which was proposed in 2014 and signed into law in 2017.¹⁰ It stipulates that EU importers of tin, tungsten, tantalum, and gold are obliged to carry out due diligence from January 1st 2021 onward. Although this EU law is only applicable to a small share of the metal sector in the Netherlands, it led to the realisation—commonly heard in other sectors as well—that it is better, as a sector, to comply voluntarily than to be regulated.

3.2.5 Opportunity to collaborate

Thirdly, the RBC agreements offer companies an opportunity to find support from other organisations to strengthen and improve due diligence implementation. The agreements allow for collaboration with the Government, labour unions, and NGOs, which gives companies access to the resources of these organisations, including financial support by the Government and SER, specific expertise, and access to networks. In addition, the agreements offer a platform for collaboration with other companies. It is believed that this creates efficiency as costs for research and tool development can be shared among the different companies. It is also believed that company collaboration can increase the leverage of these companies in identifying and addressing RBC risks.

3.2.6 Pre-existing sector initiatives

Finally, most RBC agreements had (multi-stakeholder) initiatives on supply chain sustainability preceding the RBC agreement, which already covered some of its ambitions (see Table 11 for an overview). The pre-existing (multi-stakeholder) platforms were a natural place to move the discussion on as to whether to initiate an RBC agreement and the platforms were used to build on. This was particularly observed in floriculture (Floriculture Sustainability Initiative, FSI), forestry (Green Deal (see Box 1)), coal (Coal

¹⁰ See <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/>.

Dialogue, Bettercoal), garments and textile (Plan van Aanpak Verduurzaming Nederlandse textiel- en kledingsector, Fair Wear Foundation), and TruStone (Dutch Working Group on Sustainable Natural Stone). The pre-existence of sustainability schemes also meant some groundwork had already been done on creating awareness and knowledge, which often also meant that there were active frontrunner companies to push the initiative.

Box 1. A second green deal or a new RBC agreement for the forestry sector?

In 2013, 27 parties, including sector associations in the forestry sector, labour unions, the Ministry of Economic Affairs, and CSOs, signed the Green Deal (2013-2015) to promote the use of sustainably produced timber (i.e. certified by the Forest Stewardship Council, FSC, or the Programme for the Endorsement of Forest Certification, PEFC). The Green Deal contributed to awareness raising of sustainable forest management in tropical areas and the bottlenecks in the timber supply chain, as well as the exchange of best practice in the use of certified timber and sustainable forestry (Boot, 2019).

In 2017, the forestry agreement (Houtconvenant Bevorderen Duurzaam Bosbeheer) was signed, which was predominantly meant as a continuation of the Green Deal. The agreement's main aim was to address the bottlenecks and topics already identified under the Green Deal, in order to stimulate the demand for, and mainstream the use of, certified timber in the Netherlands. This second Green Deal was already agreed upon by the signatory parties when it was shifted to the Ministry of Foreign Affairs to become part of the sector agreement initiative. The key informants, who had been involved at the time, felt that this was done under pressure from the ministries, as there was an ambition of the then Minister of Foreign Trade to establish as many sector agreements as quickly as possible. An extra dimension was thus added, to look at the extent to which market actors can take responsibility for reducing and mitigating RBC risks with the current instruments, i.e. the certification schemes FSC and PEFC, FLEGT and the EU Timber Regulation legislation. As IOB (2019) also noted, most signatories view the agreement as a renewed Green Deal rather than a sector agreement on RBC like the textile agreement.

In some cases, however, pre-existing initiatives were perceived as a barrier to the emergence of the RBC agreements because they questioned or even decreased the agreements' added value. The existence of the Responsible Care programme is, for example, one reason why an RBC agreement did not emerge in the chemical sector (see Chapter 8.3). Similarly, coal companies saw little added value of an RBC agreement because they already adhered to the Bettercoal initiative. Other sectors, where existing initiatives were perceived as a barrier to the emergence of the agreement by interviewees, included food, floriculture and gold. Often these were international initiatives with a (potentially) wider reach than the proposed RBC agreements, which also aimed to work on RBC risks in production locations, albeit typically not through due diligence but by means of standards and certification.

Table 11. Pre-existing initiatives to the RBC agreements

RBC Agreement	Pre-existing initiatives
Banking	Association of Investors for Sustainable Development (VDBO)
Coal	Coal Dialogue , Bettercoal
Floriculture	Floriculture Sustainability Initiative (FSI)
Food products	Various certification schemes, roundtables, and other initiatives.
Forestry	Green Deal, various certification schemes (PEFC, FSC, STIP, FLEGT), Amsterdam Declarations Partnership
Garments & textile	Plan van Aanpak Verduurzaming Nederlandse textiel- en kledingsector, Fair Wear Foundation
Gold	Responsible Jewellery Council, LBMA responsible sourcing, Responsible Minerals Initiative
Insurance	Code Duurzaam Beleggen Code of Conduct for Insurers, VDBO
Metals	European Partnership for Responsible Metals, Responsible Minerals Initiative
Pension funds	Code of the Dutch Pension Funds, VDBO,
TruStone	Dutch Working Group on Sustainable Natural Stone (DSW-SNS)

3.2.7 Underlying factors

The identified drivers for sectors to come to an agreement vary in importance for each sector. It depends, for example, on the type of companies dominant in the sector. Large international companies with headquarters abroad typically do not see the added value of initiatives limited to one specific country and are less sensitive to national-level CSO campaigns. This is, for example, observed in the coal agreement, the oil and gas sector, the chemical sector, and the garments and textile agreement. Small locally-oriented firms with limited capacity—on the other end of the spectrum—may lack motivation because they feel they have limited leverage to make a change, have limited capacity to deal with additional administration, and they are less vulnerable for company-specific reputational damage.¹¹ This was observed as a barrier, for example, in the gold sector.

In this sense, it seems to be important for the emergence of an RBC agreement to have a mix of large frontrunner companies with high public visibility in the Netherlands and pre-existing international RBC policies together with less-experienced companies that are willing and able to invest in the implementation of due diligence. Having a cohort of frontrunner companies participating in the negotiations can inspire other companies and be a source of cross learning. This has been, for example, observed in the floriculture, metals, TruStone, gold, insurance and garments and textile agreements.

3.3 Determinants of successful negotiations

After the decision was made to come to an agreement, the sectors entered the negotiation phase, which was facilitated by an independent organisation or person. The SER facilitated the negotiations for all agreements except for forestry and coal. In the case of gold, floriculture, and food products, the negotiations were initially started by other organisations but they were taken over by SER after these attempts turned out unsuccessful. The facilitating organisations were generally in charge of inviting stakeholders to participate in the negotiations—typically through existing networks and collaborations and with the help of MVO Platform.

¹¹ Small companies might, however, still be vulnerable to reputational damage suffered by the sector as a whole.

The time of negotiation to arrive at an agreement varied per sector, ranging from approximately one year (coal) to two and a half years (floriculture) (Figure 2). Frequently, formal negotiations were preceded by informal meetings and deliberations. For example, in garments and textile, exploratory meetings with the sector associations were held in the autumn of 2014 before the formal dialogue phase commenced in June 2015; it then took about one year to negotiate the agreement. It is notable that some agreements took particularly long to negotiate, which was also recognised by SER in its 2018 progress report on the RBC agreements (SER, 2018).

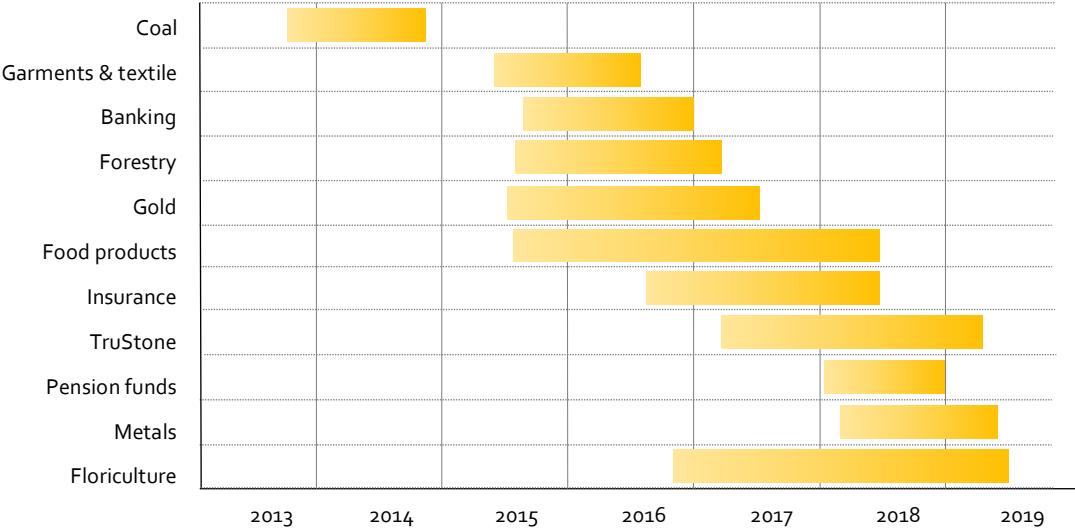


Figure 2. Negotiation timelines of the RBC agreements

The target by the Ministry of Foreign Affairs to come to ten RBC agreements by 2016 was not achieved. In fact, this goal was achieved three years later, in 2019 (see Figure 3). The reason is that the pre-agreement phase needed more time than initially anticipated. The SER (2018) reflected on this in the RBC agreements progress reports and concluded that more time was required than anticipated for: a) generating sufficient support in the sectors to start negotiations; b) improving awareness and knowledge on the international RBC guidelines of participating parties; c) conducting an initial due diligence analysis at sector-level; d) coming to an agreement with a large group of diverse stakeholders with different interests; and e) dealing with judicial issues such as competition law and information confidentiality.

Essentially, all negotiations that led to an RBC agreement can be considered successful to some extent because they led to an agreement. In addition, the success of a negotiation depends on the extent to which the organisations that participated in the negotiation are satisfied with the agreement and its results. Finally, the negotiations’ success depends on its efficiency: the resources required to come to an agreement. Below, we discuss the factors determining the negotiations’ success. This identification of success factors is based on assessment of the perspectives of all stakeholders interviewed.

3.3.1 Motivation and ambition

A first factor explaining why several negotiations did not start or were hindered and why others were considered successful is the motivation among participating companies and sector associations to come to an agreement. The factors that drove sectors to come to an agreement were discussed in Chapter 3.2. The importance of a well-motivated and ambitious sector could particularly be observed in the garments and textile agreement where a real sense of urgency existed 3.2among sector associations and among many companies to take concrete steps after the collapse of the clothing factory Rana Plaza in Bangladesh in 2013.

3.3.2 Disputes

Another important factor is the extent to which there were disputes during the negotiations, which were most common between CSOs and companies. In virtually all agreements, these disputes lengthened the negotiations and, in some sectors, it even led to CSOs or companies dropped out of the negotiations. Key disagreement points between CSOs and the sectors included the ambition level of the agreements, transparency/openness by companies on due diligence processes to signatory parties, the extent to which results are monitored, the selection of sector specific themes, and whether sector associations can represent the individual companies in the agreements. Disputes were particularly visible in the negotiations for the food sector (see Box 2), but stakeholders interviews revealed similar tensions in the negotiations of other agreements.

Some of these discussion points stem from a divergence in expectations about what an RBC agreement constitutes. While the private sector typically sees the agreement solely as a platform to support companies in due diligence implementation, CSOs generally also see it as a platform to hold companies accountable if they do not deliver on the agreement, or if there is misconduct in the supply chain. CSOs argue that openness, transparency, and accountability are essential to RBC in line with the UNGPs and the OECD Guidelines. CSOs have therefore negotiated hard on obtaining the provisions in the agreement that allow the platform to operate in this way.

While disagreements in negotiations are natural, it becomes problematic if neither the sector nor the CSOs are willing to move, which might lead to severe delays and require additional time invested by all parties involved. If the dispute is unresolvable, it might even lead to parties leaving the negotiation table or a complete (temporary) stop of negotiations. CSOs, for example, have left negotiations in food and textile, but also companies have stepped out. In the negotiations for the metals agreement, for example, a group of companies stepped out of the negotiations once it became clear that they did not want to commit to the agreed deliverables and the level of ambition of the rest of the group.

A key element that determines the extent to which disputes occur seems to be the type of CSOs involved in the negotiations. As observed by IOB (2019), some CSOs struggle to reconcile their new role as partner and advisor to companies with their more natural lobbyist and activist role as they find it difficult to accept compromise. Some CSOs have a singular thematic focus, which makes them less flexible in the selection of the specific RBC agreement themes, which becomes particularly problematic if CSOs see the sector agreement as a potential funding mechanism for projects. On the other end of the spectrum, there are CSOs who are well accustomed to collaborating with companies and participating in multi-stakeholder platforms. IOB (2019) suggests that a more rigorous CSO selection could have avoided the delays in the development of sector agreements.

Box 2. Disagreements during the negotiations of the food products agreement

The food sector was one of the first sectors, after the garments and textile sector, to respond positively to the new policy by the Ministry to stimulate sector-level RBC agreements. After a first failed attempt to come to an agreement in 2015, the negotiations really took off under SER's lead in mid-2016. Initially, participants showed much motivation and invested greatly. However, different stakeholders reported that the mistrust between the CSO and the sector resulted in less willingness to compromise once the negotiations touched upon more concrete issues.

There was particularly a strong disagreement between a large group of CSOs and the sector associations on whether the individual companies in the sector should sign the agreement, or whether the sector associations signing the agreement was sufficient. The CSOs argued that they, as co-implementers of the agreement, needed to be able to directly interact with individual companies to monitor progress and to be able to watch over the shoulder of these companies to see how they identified and addressed RBC risks. The sector associations argued that they were strong organisations and well-positioned to represent the companies in the agreement. Moreover, they did not want to use the covenant as a platform for CSOs to hold companies accountable. Neither the sector, nor the CSOs were willing to move on this point.

With the negotiations in a deadlock, a sub-group of the parties—excluding the CSOs, who were unwilling to concede on this point—convened to see whether they could come to an agreement. This sub-group—called by some 'the coalition of the willing'—was reported to include representatives from the sector associations, the SER, the chairman, the unions, and the Ministry of Foreign Affairs. This resulted in a draft text that was presented to the CSOs excluded in this process. The CSOs were surprised by this and felt they would need to either accept it as it is or step out of the negotiations,

Despite several parties involved in the sub-group negotiations reported that efforts were made to re-include these CSOs, in October 2017, six of them stepped out of the negotiations and decided not to sign the agreement. These were FairFood, Hivos, Natuur & Milieu, Oxfam Novib, Save the Children and UNICEF. They gave the following argumentation:

It is unacceptable that only sector associations are signing the agreement and not the supermarkets or food producers. Consequently, no one knows whether the companies will comply with the agreements. Neither does the covenant include concrete agreements on results. There is also too little transparency on the implementation of the agreement.

Press-release 12 October, 2017 on www.oxfamnovib.nl. (translated from Dutch)

It is too simplistic, however, to only look at the type of CSOs involved and the role they took in the negotiations. The sector has an advantage in terms of bargaining power in the current set up and role division of the negotiations. They are granted the right to take the initiative of coming to an agreement, which means that without their willingness, there is no agreement. Activist CSOs, on the other hand, can potentially be replaced by more lenient CSOs as a last resort (see, for example, Box 3). The extent to which the sector association can capitalise on this negotiation advantage depends on the strength of these sector associations—some are perceived stronger than others—and the extent to which they are under public pressure to come to an agreement (and, as a result, might face reputational damage if the negotiations fail). This seems to be the primary trump card in the hands of the CSOs: they can increase the public pressure on the sector, particularly if they are helped by current events and, as a result, bargain for a more ambitious agreement (see Box 3).

Box 3. Public pressure as leverage for CSOs in the TruStone negotiations

In August 2017, a couple of months into the TruStone negotiations, *The Dark Sites of Granite* report was published, among others by Arisa—a CSO involved in the negotiations. The report claimed that a number of Dutch natural stone companies—two of which were part of the TruStone negotiations—sourced from quarries using child labour. For six months, the negotiations almost came to a stand-still, in part because three companies—including the two who were part of TruStone negotiations—responded by threatening Arisa with a lawsuit.

Interestingly, looking back, all stakeholders see this incident as helpful in the negotiation process. Although, initially, it led to a clash between the parties, it was also a 'wake-up call', especially for companies. In the end, the report created much-needed awareness on the importance of RBC, it made the agreement more stringent, and led to more clearly spelled-out roles and responsibilities of the different parties, thematic priorities, and due diligence requirements.

In light of this analysis, it makes sense that many of the CSOs indicated that they expected a stronger role from the Dutch Government in the negotiations as a countervailing force to the bargaining power of the sector. The Government has substantial bargaining power as they are the most important funder of the agreements (see Chapter 7); they can simply decide not to finance the agreement, if it does not meet their minimum quality standards (e.g. in terms of ambitions, the level of transparency and accountability, or regarding concrete deliverables). The Government could potentially also have capitalised on its legislative power. It has, however, generally shied away from this role and has mostly operated in the background as a facilitator and/or mediator. This is in line with the SER progress report findings on the RBC agreements (SER 2018) and IOB findings (2019). One potential reason the Government took this background role was its clear commitment not to interfere with what was considered a sector initiative following the SER advice (SER 2014). According to interviewees, the SER's advice of "leaving the initiative to the sector" should not be interpreted as advice to take a role in the background during the negotiations. IOB suggests that another potential reason why the Government took this role was its ambition to conclude at least 10 agreements by the end of 2017, which may have resulted in a focus on quantity instead of quality.

Besides disagreements between CSOs and the sector, there have also been tensions and disputes between other parties that have prolonged the negotiations. The negotiations for the TruStone agreement, for example, have reportedly been affected by tensions between sector organisations. In the floriculture sector, there were tensions between the labour union and the companies. The labour union wanted to integrate the working conditions on Dutch flower farmers into the scope of the agreement. However, the companies, and the Ministry of Foreign Affairs, considered this to fall outside the scope of a sector agreement that addresses the international component of companies' operations and supply chains. In April 2018, the union therefore announced that it would discontinue the negotiations, emphasising that as long as decent working conditions were not assured in the Netherlands, it would not have a mandate to sign an RBC agreement. The position taken by the union resulted in a high degree of friction and misunderstanding among participants. According to respondents, this stalled the negotiations for about three-quarters of a year and led to an erosion of trust. Eventually, a solution was found in that the agreement includes a commitment for signatory parties to comply with Dutch laws and collective agreements that are relevant to the sector.

3.3.3 Strong facilitation

Strong facilitation of the negotiation process is broadly acknowledged as an important way to bridge the gap in expectations, to create a common understanding of (common) interests, and to build trust. The SER, in particular, is perceived as a neutral broker with much experience in guiding multi-stakeholder dialogues. They are appreciated for their thorough approach whereby much time is spent initially in gathering information and getting to know each other before commencing with negotiations. The important role of the facilitator is also evidenced by the floriculture, food, and gold sectors, for which the first attempts to come to an agreement reportedly failed due to a lack of strong facilitation. The important

role of SER and Bewust met Hout (who facilitated the forestry agreement negotiations) in the negotiations was also identified by IOB (2019).

We have identified three key elements of strong facilitation. These elements were also identified in the SER report on the progress of the RBC agreements (SER, 2018).

First, it is important that the parties in the negotiation are well aware of their role and what they can contribute. It is also important that each party is aware of the added value of the agreement—collectively—but also for the individual party. It helps by having explicit articles in the agreement in which the added value is articulated for each stakeholder category (such as in the metals agreement).

Second, as parties have different roles, values, and interests, it is important—for successful negotiations—that parties get to know each other to align expectations and to build trust. Trust can be a (partial) substitute for contractual safeguards (Lui & Ngo, 2004) and can thus smooth the negotiations, as well as the agreement's implementation. This process can be facilitated through stakeholder presentations, company visits, and travel to production locations or important hubs in the value chains.

Third, a general observation is that parties perceive the negotiations as slow and at times even demotivating. It is, however, also generally recognised that having a long information phase preceding the negotiations in the end pays off in terms of better information, aligned expectations, and trust.

The SER has demonstrated to apply lessons learned from the negotiations of the earlier agreements in the newer ones and to introduce new innovations where this is appropriate. The SER, for example, carefully applied each of the three elements in the more recently concluded negotiations in the metal sector—and, based on these lessons, has also introduced some innovations (see below). As a result, the interviewed stakeholders in the metals agreement are generally very positive about the negotiation process, the written agreement itself, the group dynamics, and the level of mutual trust between parties. Although participants felt, at times, demotivated by the slowness of the negotiation process, there is a general recognition that taking time in the beginning was necessary to achieve these positive outcomes.

In addition to these three elements, we have identified two additional lessons based on the experiences in more recent agreements. First, the TruStone agreement demonstrated how a pilot project initiated before the agreement was signed can give a boost to the negotiations. This 3-year pilot project, funded by the Fund against Child Labour (FKB) under the Netherlands Enterprise Agency (RVO), aims to learn lessons on how companies could contribute actively towards reducing RBC risks in the supply chain, particularly those associated with child labour in India and China. The pilot project also teaches governments how to include the demand for responsibly sourced natural stone in their tenders, in accordance with international law and without delays. Some interviewees indicated that TruStone would not have been agreed without this project, as it became the mechanism to get contracting authorities involved as signatories in TruStone, which had been a key barrier for success in earlier RBC initiatives in the sector.

Second, the metals agreement introduced an agreement on broad terms ('akkoord op hoofdlijnen'), which was concluded half-way through the negotiations. This agreement articulated what parties already agreed on before they proceeded with the remainder of the negotiation. Having an agreement on broad terms, reportedly, smoothed the process as it laid a solid foundation to build on and provided the parties with a good overview of the details on which there was no agreement yet. This allowed the parties to focus their attention on these remaining issues, while not having to worry about what was already on paper. Later, this approach was also followed in the negotiations for the pension funds agreement.

3.4 Increased awareness and knowledge and behavioural change during the negotiation phase

The SER and the other facilitators put a lot of emphasis on increasing the participants' knowledge level in the negotiation phase. Key activities included getting to know the other parties and their interests, learning how to negotiate using a mutual gains approach, increasing knowledge of RBC guidelines and due diligence, and increasing awareness of relevant RBC risks for the sector through value chain mapping exercises. The extent to which the negotiation phase led to important changes in the knowledge and awareness among companies and their RBC policies, however, varied strongly between sectors and—within sectors—between companies (see Table 12 for an overview of the findings).

The extent to which the negotiations led to behavioural change among companies in the first place depends on the extent to which companies are exposed to the negotiations. In the case of food products, forestry and garments and textile, this exposure was limited because sector associations represented the companies in the negotiations. While the sector associations maintained a close rapport with their members throughout, this served the purpose of getting companies' viewpoints and, ultimately, consent. It did not serve the purpose of sharing knowledge. While some indirect learning probably took place, it is clear that the effects of the negotiations on these companies were limited.

Although, in the insurance sector, the negotiations were also conducted by the sector association, learning did take place among members as result of the sector association 'Het verbond's efforts. They organised knowledge and awareness sessions that catered to the specific needs of small, medium and large insurance companies. These sessions were organised throughout the country such that all their members could attend, which raised knowledge and awareness on RBC and the RBC agreement, particularly among smaller insurance companies.

A second key aspect is the extent to which involved companies were already aware and knowledgeable regarding RBC and the OECD Guidelines and were implementing due diligence prior to the negotiations. The companies in the coal agreement, for example, indicated having implemented due diligence already before the start of the agreement. According to the companies, their policies included a code of conduct for suppliers, based on the UNGPs and OECD Guidelines, with expectations for suppliers on how to behave with respect to human rights, labour, and the environment (E.ON et al., 2013). In addition, all companies were participating in the European initiative 'Bettercoal', which has taken a prominent place in due diligence policies in the coal supply chain since its launch in 2012.

In other cases companies did not have due diligence in place according to the OECD Guidelines but had sustainable sourcing systems in place. Companies that participated in the negotiations for the floriculture agreement, for example, considered themselves frontrunners with good awareness of sustainability issues and various RBC-related risks. All of them had been part of the Floriculture Sustainability Initiative (FSI), which had already increased their awareness of RBC risks. Most of them had, however, not engaged in due diligence as per the OECD Guidelines. Instead, the predominant focus of companies was on sustainability labels and certification in line with FSI. Similarly, banks, pension funds and insurance companies state that the commitments and agreements, as stipulated by the respective RBC agreements, were not (entirely) new for them: they were built on initiatives and best practices that were already existing. Some banks, pension funds and insurance companies already had a human rights policy statement, were expanding so-called 'ESG (environmental, social, and governance) investments', or stated that they already reported in line with the UNGPs or OECD Guidelines.

Table 12. Learning and behaviour change following the negotiations

RBC Agreement	Learning by companies during the negotiations
Banking	For the banks, the commitments and agreements under the Dutch Banking Agreement were not (entirely) new; it built upon initiatives and best practices that were already there. The general awareness of potential human rights risks of investments was also already present. However, there are indications that companies did obtain a more detailed understanding of the international guidelines.
Coal	All companies that participated in the Covenant indicated having already implemented due diligence before the start of the Covenant. According to the companies, their policies prior to the Covenant included having a code of conduct for suppliers "to inform and guide our suppliers on the way we expect them to operate in terms of human rights, labour, environment and ethical behaviour" (E.ON et al., 2013). These codes are based on the UNGPs and OECD Guidelines and comprise Counter Party Risk Assessments. In addition to individual company efforts, Bettercoal has taken a prominent place in due diligence policies in the coal supply chain since its launch in 2012.
Floriculture	The participating companies were already aware of sustainability and various RBC risks in the floriculture sector prior to the negotiations for the floriculture agreement. All companies consider themselves frontrunner companies with longer-term engagement on sustainability. For example, all of them, including the auction and sector associations, have also been part of FSI. While sustainability in itself was not new to companies, most of them had not engaged in due diligence as per the OECD Guidelines. Instead, the predominant focus of companies was on sustainability labels and certification, in line with FSI.
Food products	The negotiation phase likely had limited effect on individual companies as their involvement in the negotiations was limited. Instead the sector associations were involved.
Forestry	The negotiation phase likely had limited effect on individual companies as their involvement in negotiations was limited. Instead, the sector association was involved. In addition, the focus in the negotiations were focused on extending the green deal and on sustainable forest management, which is something that has been high on the agenda already for years. Only when it was decided that the new green deal would be converted into an RBC agreement ('last-minute'), was RBC discussed.
Garments & textile	The learning effects for companies during the negotiation phase seem to have been limited because they were not directly involved in the process. Instead, the sector associations were involved. Much of the content that the sector associations reported to their members was not new as the sector had been confronted with repeated media attention and NGO campaigns for many years
Gold	Initially there was limited awareness, particularly among the smaller companies in the negotiations, on potential RBC risks and how the Dutch sector was connected to these risks. The sector initially considered issues in the mines as 'remote from their business'. Interviewees confirmed that the sector made important progress on these issues during the negotiations.
Insurance	The effects were different for insurance companies of different sizes. While larger companies, generally, were quite aware of sustainability issues or ESG due diligence, this was not the case for the smaller companies. While the negotiations were led by sector associations, knowledge and awareness sessions that catered to the specific needs of small, medium, and large insurance companies raised the knowledge and awareness on RBC and the RBC agreement, particularly among smaller insurance companies.
Metals	Except for a few frontrunners, most companies involved in the negotiation had very limited knowledge of RBC, the OECD Guidelines, or due diligence. The negotiations not only led to more awareness and knowledge on these issues, but also led to better insight into the concrete risks for specific metals, following an elaborate scoping study commissioned by the agreement parties.
Pension funds	Pension funds became aware of the OECD Guidelines for Institutional Investors (OECD, 2017) and how to look at risks on people and society instead of financial risks for the investee company and pension fund. Several of the larger funds were already aware of this and had already defined this in their ESG policy but, generally, for the sector, this was a new way of looking at risks. What also changed was the idea that ESG objectives are at the cost of financial returns.
TruStone	There were very few companies in the sector that had ever heard about the OECD Guidelines or RBC before the TruStone negotiation was initiated. All stakeholders interviewed agreed that the awareness of companies and contracting authorities of RBC issues increased during the TruStone negotiation phase. This was amplified following the <i>Dark Sites of Granite</i> report crisis and the pilot project on socially responsible procurement.

In sectors with little prior knowledge, companies that participated in the negotiations did go through a particularly steep learning curve. This was observed for metals, TruStone, gold and the smaller companies in the insurance sector. Many companies within those sectors had very little awareness of RBC risks in their supply chains, to what extent they were responsible, and how they could manage those risks prior to the negotiations. Few were aware and knowledgeable of the OECD Guidelines and the UNGPs and concepts such as due diligence. Particularly in these sectors, much time was invested by the facilitating organisation (and other parties) to increase the overall knowledge level of participants—and with success.

However, in these sectors there were also front-running companies who did not benefit directly from these knowledge sessions. These were typically larger companies with dedicated sustainability managers and procurement policies that took sustainability into account. These front-runners were generally regarded as a source of knowledge and inspiration that contributed to lifting up the knowledge level of other companies.

Even though the negotiations generally improved the awareness of RBC risks and knowledge on the OECD Guidelines and due diligence, we have not found any evidence that the negotiations immediately led to important changes in company behaviour. One explanation for this is the finding that the largest gains in awareness and knowledge took place at companies that did not yet have much experience with international RBC. This means that the extent to which the learning effects of these negotiations influenced the behaviour by these companies (with respect to RBC) is constrained by the same factors that explained why they were lagging behind in the first place. These companies are typically smaller or operate in markets with less pressure by consumers, media, or CSOs. This means that the learning took place at companies with less capacity and/or less incentive to implement due diligence, which makes it less likely that this knowledge and awareness is translated immediately into action. A second explanation is that companies might have increased their basic knowledge and awareness, but did not yet have the tools to start implementing the obtained insights. It is generally acknowledged that having basic awareness and knowledge is insufficient for companies to implement due diligence. A final explanation is that companies would rather wait until after the agreement is signed so they can make use of the available support and tools in the implementation of the agreements (e.g. guidance documents, collective risk identification, and collective projects).

Chapter 4



4 Reach, coverage and scaling of the RBC agreements

4.1 Key findings

- ❖ The current set of RBC agreements does not yet fully cover the 13 sectors with high RBC risks as identified by KPMG (2014). Important (sub-)sectors missing include agriculture, livestock rearing, construction, civil engineering, chemicals, energy, electronics, food service companies, oil and gas, various wholesale sub-sectors (including agricultural commodity traders), and various retail sub-sectors.
- ❖ 394 companies have formally committed to an RBC agreement. This comprises companies in the following sectors: coal, garments and textile, banking, gold, insurance, pension funds, floriculture, metals and natural stones. Another 100 companies have signed an associated code of conduct in the gold sector.
- ❖ RBC agreements aim to increase their 'reach' by including sector associations as agreement parties. However, influence on non-signatory members of sector associations is limited (mostly promotion activities), with the exception of the food products agreement.
- ❖ The market coverage of the RBC agreements is substantial for five individual (sub-) sectors (i.e. coal, banking, insurance, pension funds, and textile) but is still relatively limited for gold, metals, floriculture, and natural stones. For food products, the market coverage is unclear, because no individual companies have formally committed to the respective RBC agreements. Adherence by way of the sector associations is irrelevant for forestry and still unclear for the food products agreement.
- ❖ We estimate the total number of medium and large-sized companies in the 13 high-risk sectors of Netherlands at 31,270. Given the total number of companies that formally adhere to the RBC agreements is 494, we must conclude that the RBC agreements only reach a small share—an estimated 1.6%—of the companies for which we expect international RBC guidelines to be pertinent.
- ❖ So far, growth in the number of signatory companies does not meet the RBC agreement targets. Since signing the agreement, growth has been achieved for the agreements on garments and textile (from 55 to 69), TruStone (from 3 to 32), gold (from 10 to 12), and pension funds (from 79 to 83).
- ❖ Key barriers to growth in a number of signatory companies include: a) limited incentives and limited capacity of companies that are not (yet) part of the agreement; b) limited strategy on persuading companies to join the agreement; and c) limited capacity among the signatory parties for outreach activities.

4.2 Which high-risk sectors in the Netherlands are covered by the RBC agreements?

KPMG (2014) identified 13 sectors with high RBC risks that are important in terms of size for the Dutch economy. As discussed in Chapter 2, the KPMG analysis has determined the sector focus for the RBC agreement policy by the Government. The Government expects the 13 high-risk sectors to initiate a

trajectory to prevent and mitigate RBC risks and has incited representative sector associations to come to RBC agreements.

Table 13 presents a list of the 13 sectors identified by KPMG (2014). Two sectors identified by KPMG—the chemicals industry and oil and gas—are not (yet) covered by any RBC agreement.¹² The other 11 sectors have at least one or more RBC agreement. Garments and textile and the food and beverage industry, as defined by KPMG, seem to be (almost) entirely covered by the RBC agreements.¹³ The financial sector is also well covered. However, the other eight sectors have important sub-sectors not yet covered by existing RBC agreements. Important (sub-)sectors for which there is no RBC agreement include agriculture, livestock rearing, construction, civil engineering, energy, electronics, non-food retail, food service companies, various wholesale sub-sectors (including agricultural commodity traders), paper, and cardboard.¹⁴

Table 13. The 13 sectors identified by KPMG (2014) and coverage by RBC agreements

High-risk sector	Coverage by RBC agreements	Sub-sectors not covered
Agriculture and horticulture	Floriculture agreement	Agriculture, horticulture with the exception of floriculture, livestock rearing.
Chemicals industry	None	
Construction	TruStone agreement Forestry agreement Metals agreement	Residential and non-residential construction, civil engineering, other (specialised) construction, and the building materials industry with the exception of metal, timber, and natural stones.
Energy	Coal agreement	Producers, suppliers, energy traders (with the exception of coal-fuelled electricity plants), grid operators.
Financial sector	Banking agreement Insurance agreement Pension funds agreement	Asset managers, private equity, stock traders (excl. banks, insurance companies, and pension funds).
Food and beverage industry	Food products agreement	-
Metal and electronics	Metals agreement Gold agreement	Electronics
Oil and gas	None	
Retail	Food products agreement Garments and textile agreement Gold agreement	Non-food products with the exception of textile, gold jewellery, food retailers and food-service companies with the exception of supermarkets.
Textiles and clothing	Garments and textile agreement	-
Wholesale	All except coal, banks, insurance, and pension funds	Agricultural commodities and non-food products with the exception of textile, gold, metals, natural stones, timber, and flowers.
Wood and paper	Forestry agreement	Paper and cardboard production.

¹² See Chapter 8 for a discussion of why this is the case.

¹³ The coverage of the food industry is confined to FNLI membership, which reportedly covers about 80% of all companies in the food industry in terms of turnover.

¹⁴ There are currently efforts ongoing for agriculture and wind energy to come to an RBC agreement.

The analysis in this chapter took the KPMG analysis as a starting point. However, all sectors in the Netherlands are faced with RBC risks, including the ones that did not make it to the list of priority sectors. This is also acknowledged by KPMG (2014): “Virtually all sectors deal with countries—for example through purchases—where the Environmental, Labour, Human Rights and Corruption regulations are less stringent or that have less compliance than the Netherlands.”

4.3 How many companies adhere to the RBC agreements?

Figure 3 gives an overview of 494 companies formally adhering to the RBC agreements, in some form, based on the latest information available at the time of writing. It distinguishes between companies that are connected as a signatory party, companies that have not signed the agreement but have formally adhered to the agreement through the sector association, and companies that have not signed the agreement itself but have signed a code of conduct derived from the agreement.

In total 494 companies are formally adhering to the RBC agreements in any of these three ways. There are 214 companies that signed an RBC agreement, of which 394 have committed to the full objectives of RBC agreements and another 100 companies have signed an associated code of conduct in the gold sector.

There are 214 companies that directly signed an RBC agreement. The agreements with the highest number of company signatories are pension funds, garments and textile and TruStone. Relatively few company signatories can be found in the agreements on floriculture, banking, metals and coal.¹⁵

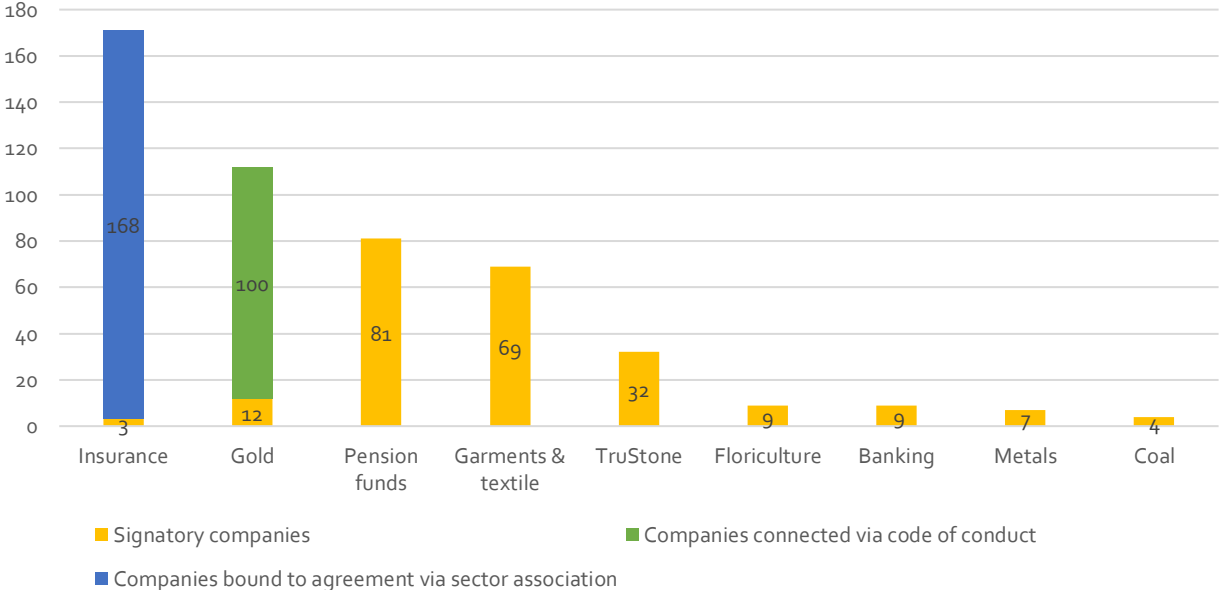


Figure 3. Companies formally committed to the RBC agreements

Explanation: For the TruStone agreement Dutch (16) and Flemish (16) companies are included. For banking and coal, the number of signatories refers to the concluding date of the agreements (i.e. end of agreement). For the agreement on garments and textile, the number of companies and not the number of labels is included.

The insurance agreement was signed by the two sector associations *on behalf* of their, in total, 171 member companies, which means that all member companies adhere to the agreement because it is approved as

¹⁵Excluding companies that stepped out of the agreement.

such by the general assembly for association members. In addition, three large insurance companies have individually signed a letter of intent to commit to adhering to the RBC agreement.

The gold agreement is currently signed by 12 companies. In addition, 100 members of the FGZ and NGG sector associations—particularly smaller jewellery stores and independent goldsmiths—signed a separate code of conduct. This code of conduct is in line with the OECD Guidelines and designed particularly for smaller companies. In practice, companies commit to checking whether their gold suppliers are a member of the RBC agreement and/or have due diligence in place and to report their findings to their association secretariat. Medium and large-scale companies are expected to sign the agreement. This distinction is in line with the proportionality provision in the UNGPs, which states that “the means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size” (UN, 2011). A similar approach can be found in the pension funds agreement, which distinguishes between a *wide track* (all 81 companies)—which uses a generic approach to assist companies in implementing due diligence—and a *deep track* (10 companies)—designed for frontrunner companies to develop forms of cooperation and to increase leverage in order to prevent, mitigate, or remediate (possible) adverse impacts of investee companies.

4.4 Reaching companies through sector associations

Another way companies can be ‘reached’ by the RBC agreements is by being a sector association member that signed the agreement. In total, 32 sector associations have currently signed an RBC agreement (see Table 14).¹⁶ Together, these sector associations represent more than 26,518 companies.¹⁷ However, not all member companies fall within the scope of the sector agreements. The sector association for non-food retailers, INretail, for example, signed both the forestry agreement and the garments and textile agreement. INretail has about 13,000 member companies but not all of these sell wooden products or textiles. Another example is Glastuinbouw Nederland, who represent not only floriculture producers but also fruits and vegetable producers.

Table 14. Sector association membership that signed an RBC agreement

RBC agreement	Sector association	No. of member companies
Banking	Nederlandse Vereniging van Banken (NVB)	60
Floriculture	Glastuinbouw Nederland	1,300
	Tuinbranche Nederland*	420
	Vereniging van Groothandelaren in Bloemkwekerij-producten.	80
Food products	Centraal Bureau Levensmiddelenhandel (CBL)	26
	Federatie Nederlandse Levensmiddelen Industrie (FNLI)	550
	Koninklijke Nederlandse Specerijenvereniging (KNSV)	60
Forestry	Koninklijke Vereniging Van Nederlandse Houtondernemingen (VVNH)	259
	Nederlandse Branchevereniging voor de Timmerindustrie (NBvT)	200
	Bouwend Nederland	4,315
	Aannemersfederatie Nederland	1,800

¹⁶ Two sector associations have signed two RBC agreements—INretail and Tuinbranche Nederland—and are only counted once.

¹⁷ This excludes the number of members of DI-Stone and Febenat.

	Aedes	274
	Vereniging voor ontwikkelaars en bouwondernemers (NVB)	105
	Koninklijke CBM	500
	Nederlandse Emballage en Palletindustrie Vereniging (EPV)	38
	Nederlandse Vereniging van Houtagenten (NATA)	20
	Koninklijke Vereniging van Handelaren in Bouwmaterialen in Nederland (Hibin)	141
	Dutch Man	19
	INretail	13000
	Tuinbranche Nederland	420
Garments & textile	INretail	13000
	Modint	400
	VGT	18
Gold	Federatie Goud en Zilver	700
	Nederlands Gilde voor Goudsmeden	117
Insurance	Het Verbond van Verzekeraars	159
	Zorgverzekeraars Nederland	11
Metals	Vereniging Nederlandse Metallurgische Industrie (VNMI)	16
	Eurometaux	23
Pension funds	Pensioenfederatie	197
TruStone	DI-Stone	?
	Nederlandse Ondernemersvereniging voor Afbouwbedrijven (NOA)	1700
	Bond voor Aannemers in Tegelwerken (Bovatin)	?
	Febenat	10

Source: sector association websites, interviews, news items, the written RBC agreements

In all RBC agreements, the sector associations have committed to supporting the implementation of the agreement and to promoting the agreement among their (non-signatory) member companies. The RBC agreements' influence on non-signatory sector association members is thus generally limited to the exposure of the sector associations' promotional activities.

In three sectors, the RBC agreement was not signed by individual companies but *only* by the sector associations as representatives of their member companies: insurance, food products, and forestry. In this case, the question arises what this implies for companies that are members of the signatory sector associations. For the insurance agreement, we have covered this question in Chapter 4.3: companies are individually committed to the agreements as this was decided by the general assembly for association members.

For the forestry and food products agreements, however, the member companies of the signatory sector associations have not formally committed to RBC agreements.

The forestry agreement is only signed by sector associations, as the objectives of the agreement are articulated at sector level, rather than at the level of member companies. In this sense, the agreement is different than other RBC agreements as its objectives relate exclusively to filling specific knowledge gaps

at sector level (see Chapter 2). For this reason, the question about how many companies adhere to the agreement appears not to be relevant.¹⁸

The food products RBC agreement is more in line with other RBC agreements as it includes a goal at the level of individual companies. The goal is that *all* direct and indirect sector association members within five years implement 'adequate' due diligence. Another difference in comparison to the forestry agreement is the fact that the sector associations in the food products agreement have agreed to monitor progress of due diligence implementation among individual member companies and to make the results publicly available.

Box 4. Advantages and disadvantages for sector associations as signatories (for companies)

Different arguments have been put forward by proponents of coverage via sector associations (particularly the sector associations themselves) and opponents (particularly the NGOs). Arguments for sector associations signing include:

- Signing as a sector association ensures there is 'full sector coverage': the agreement is also inclusive to those companies that would not have joined on an individual basis. It is particularly expected that larger frontrunners companies (in terms of RBC) would sign the agreement, while SMEs who are less advanced in implementing due diligence and who can gain the most from support are expected not to sign individually.
- The negotiation and implementation process becomes more manageable by working through sector associations.
- It avoids the free-rider problem: companies waiting to sign until investments are made and the agreement has shown its value.

Arguments against only the sector associations signing the agreement include:

- The agreements made by the sector associations are not on behalf of every individual member company: companies can still decide not to adhere to the agreement. 'Full coverage' only exists on paper, but it is still to be seen to what extent individual companies are committed to the agreement signed by their association.
- The companies' commitment is expected to be higher if they signed themselves: they have more incentives to understand the agreement and to contribute to goal achievement.
- Individual companies signing the agreement would allow for more concrete agreements on a result-level. As the agreement is signed by individual companies, it is not possible to include agreements on output- and outcome-level results to be achieved by those companies. Consequently, the agreement is necessarily more on the level of activities to be conducted and the input of the different parties (in terms of effort).
- There is limited direct communication between the parties in the agreement and the individual companies; communication instead happens via the sector associations.

Regardless of how we would weigh these arguments, it is generally agreed that coverage through sector associations is less direct compared to coverage through individual companies signing the agreement. As companies can still make the decision not to adhere to the agreement, average commitment is likely to be lower. Thus, there seems to be a trade-off between the inclusiveness of the agreement and the average commitment of the companies involved.

It is also not disputed that there is less direct contact between the parties and the companies as a result of the individual companies not signing the agreement. NGOs view this as problematic, as there is less opportunity to monitor progress, to check how companies identify and address RBC risks, and to hold companies accountable if misconduct in the supply chain is signalled. For the sector associations, this is not an important argument, as they do not want to use the covenant as a platform for NGOs to hold companies accountable. Instead, they generally see the RBC agreement as a way to support companies in improving and strengthening due diligence.

The food products agreement also stipulates that the sector associations commit to a process of observable strengthening of due diligence among member companies. It has a separate article on

¹⁸The forestry agreement does stipulate that the sector associations will make a contribution—"via their member companies"—to increasing the share of sustainably produced wood used in the Netherlands and to address RBC risks in the chain. These commitments seem, however, detached from the rest of the agreement as they are not instrumental for achieving the objectives of the agreement. It is also not further specified what activities sector associations will undertake to contribute to these results among their member companies, besides via support to the agreement objectives.

increasing companies' involvement, which stipulates that the sector associations put in 'maximum effort' to ensure all members commit to the RBC agreement. More specifically, it requires that the sector associations:

- put the importance and adherence of the RBC agreement 'regularly' on the agenda of their board meetings and members' general assembly;
- ensure 'sufficient' members participate in collective projects;
- ensure 'sufficient' companies participate in RBC agreement stakeholder meetings;
- indicate to companies who are not progressing that the agreement was signed also on behalf of them.

It is, however, not further specified in the agreement what activities sector associations precisely undertake to achieve the goal of the agreement.

The food products agreement sector associations seem, in practice, to increasingly take ownership of the agreement. One sector association (CBL) has, for example, initiated and co-funded a collective project with IDH on improving living wages in the banana sector in which almost all their members participate. Another sector association (FNLI) is giving substance to the RBC agreement by organising and funding commodity-specific training sessions for members and they are now rolling out a needs assessment to see what their members require next to implement or strengthen their due diligence. Funding collective projects and funding and organising training sessions are activities that are not agreed on by the parties in the written text. These are thus examples of how the sector associations give substance to the commitment to put in 'maximum effort' to ensure their members comply with the OECD Guidelines. Other stakeholders in the agreement have made observations in line with this: food sector associations seem to be committed to achieving the agreement's objectives, are making investments, and are giving publicity to the agreement.

It still remains to be seen how many companies will adhere to the RBC agreement for food products. The total membership of the three sector associations is 632 companies (Covenant Voedingsmiddelen, 2019), but these companies still have a choice as to whether they commit to the agreement or not; the sector associations cannot impose this. Several other stakeholders in the agreement have expressed doubts about the extent to which member companies are currently committed to the agreement. They point to the fact that only 34 FNLI member companies (out of a total of 550) submitted the self-monitoring information. We need to consider, however, that this was a baseline exercise and the agreement was underway for about one year at the time this information was being collected. Follow-up surveys will be able to show whether the companies' adherence to the agreement is increasing.

4.5 Market coverage

Besides the number of companies connected to the RBC agreements, the ToR asked us to look at the extent to which adhering companies cover their respective sectors. To assess this, we will first look at the agreements' scope and then we discuss how the adhering companies cover this scope.

4.5.1 Scope of the agreements

The 'market coverage' of the RBC agreements first depends on the scope of the agreements; i.e. the part of the sector the agreement is targeting. Table 15 describes the scope of the different RBC agreements. The discussion on the financial agreements is separated from the non-financial agreements.

Six (non-financial) agreements have an explicitly broad sector scope: garments and textile, metals, TruStone, floriculture, forestry, and gold. These agreements practically target all companies in the Netherlands that procure the product for which the RBC agreement is concluded. The scope of the metals

agreement is particularly broad as it also includes companies that provide 'essential' materials and services to companies that produce and/or rely on metals and metallurgical materials.

Table 15. The sector scope of RBC agreements

RBC agreement	Scope
Banking	The scope of the agreement is limited to corporate loans and project finance activities by banks in the Netherlands and abroad.
Coal	Energy companies active in the coal value chain.
Floriculture	Companies breeding, producing, trading, selling ornamental plants, including flower bulbs, parent material, cut flowers, cut green, nurseries, and pot and bedding plants.
Food	The food products sector is not defined by the agreement. De-facto its scope is supermarkets, food product wholesalers, and food industry in the Netherlands.
Forestry	Companies connected to global timber supply chains, including companies from the construction, retail, trade and wholesale, processing, manufacture and furniture sectors.
Garments & textile	Companies who produce or trade in textile or garments in or via the Netherlands.
Gold	Companies in the Netherlands with gold or gold bearing materials in their value chains.
Insurance	The scope of the agreement is investments in companies
Metals	Companies (and industry associations representing companies) that produce and/or rely on metals and metallurgical materials in their (production) processes and/or provide essential materials or services to enable this.
Pension funds	The scope of the agreement is investments by pension funds (all asset classes).
TruStone	Companies who import or process natural stones or products based on natural stones in or via the Netherlands or Belgium.

The coal agreement focuses exclusively on energy companies active in the international coal value chain. It therefore does not cover other companies in other sectors that might use coal in production, such as metallurgic companies.

The food products agreement does not explicitly define its scope. Currently, it covers supermarkets, the food and beverage industry, spices, and food products wholesalers, which are a member of one of the three signatory sector associations. The agreement also includes a provision (art. 4.5), which implies that food products sector non-member companies are also encouraged to support—and commit to—the agreement. The term 'food products sector' (in Dutch: 'voedingsmiddelensector') is, however, not commonly used and not explicitly defined by the RBC agreement. It is unclear to what extent companies such as agricultural commodity traders, food service companies, or animal feed producers are targeted and whether the sector associations representing these companies could join the agreement.¹⁹

All three agreements in the financial sector—insurance, pension funds, and banking—focus on the signatory companies' investment activities. This is a natural choice in light of the recommended prioritisation of RBC risks by the UNGPs. The RBC agreements for pension funds is broadest in scope as it covers all asset classes as defined by the OECD Guidance for Institutional Investors (OECD, 2017).²⁰ The scope of the insurance agreement is limited to company stocks and bonds—and thus excludes government

¹⁹ When asked about this, different parties in the agreement had different opinions.

²⁰ The asset classes defined by OECD (2017) are listed equities, loans to governments (government bonds), loans to companies (corporate bonds), real estate, private equity, and infrastructure.

loans. The scope of the Dutch banking agreement is limited to corporate loans and project finance activities.²¹

4.5.2 Which part of the targeted sectors are covered by the RBC agreements?

Market coverage depends on the size of companies connected to the agreement. This information is, however, not publicly available. The parties in five agreements have communicated the estimated market share of their signatory companies (banking, insurance, pension funds, coal and garments and textile), but parties in the other six agreements could not estimate this.²² For these agreements the only information available is the number of signatory companies and some qualitative information on the type of companies that have signed the agreement.

To assess market coverage, we first look at the market share as communicated by the parties in the agreements. If this is not available, we look at the *number* of signatory companies and compare this with the total number of small, medium, and large companies in the sector.²³ The number of companies in the sector is based on CBS statline data on the 2nd quarter of 2020. The sector is defined using Standard Industrial Classifications (in Dutch 'Standaard Bedrijfsindeling' (SBI)), which are matched with the scope of the agreements (see Chapter 4.4.1).²⁴ It is important to keep in mind that this might lead to an over- or underestimation of the actual number of companies in the Netherlands that fall within the scope of the RBC agreements because the CBS sector classification might be narrower or broader than this scope.

Based on this information, we assess the market coverage of each agreement as 'high', 'medium', or 'low' (see Table 16). The forestry sector and the food products sector are excluded in this assessment as the number and type of companies reached by these agreements is not clear (see Chapter 4.3).

²¹ This scope is motivated in the agreement by its "global reach, the actual and potential adverse human rights impacts in this area, the material relevance, the potential of greater leverage and—within legal boundaries—the potential opportunities for action and information exchange in this area to have significant effect on the impacts" (Dutch Banking Sector Agreement, 2016).

²² The estimation of the market shares by the secretariats could not be checked.

²³ Note that in the CBS statline data, the number of companies are rounded up to multiples of five. As each size category is calculated based on multiple other size categories, the cumulative bias in these numbers can be quite substantial.

²⁴ The scope of each RBC agreement is matched with SBI codes as follows: Banking (641); floriculture (013, 4622, 47761, 47762), food products (10, 11, 463, 4711); forestry (16, 46731, 47523); garments and textile (13,14,15, 4641, 4642, 4741, 4771, 47914); insurance (651, 652); metals (24, 25, 26, 27, 28, 29, 30); pension funds (653); and TruStone (395, 4333).

Table 16. Assessment of market coverage of RBC agreements

RBC Agreement	Number of companies in the sector (CBS)				Total member companies / sector associations ²⁵	Total number of companies committed to the RBC agreement	Market coverage reported	Assessment market coverage
	Small	Medium	Large	Total				
Banking	85	45	30	160	60	9	90%	High
Coal	n/a	n/a	n/a	n/a	0	4	100%	High
Floriculture	7910	995	40	8945	1800	9	n/a	Low
Food products	16785	2935	435	20155	636	n/a	n/a	n/a
Forestry	3650	395	30	4075	21091	n/a	n/a	n/a
Garments & textile	8260	940	115	9315	13418	69	40%-45%	Medium
Gold	n/a	n/a	n/a	0	817	112	n/a	Low-Medium
Insurance	185	55	50	290	170	171	99%	High
Metals	17730	3200	515	21445	39	7	n/a	Low
Pension funds	315	15	0	330	197	81	93%	High
TruStone	365	30	0	395	1710+	16	n/a	Low-Medium

Small: 1-9 employees; medium: 10-99 employees; large >100 employees. Total is the sum of the number of small, medium, and large companies.²⁶

The coal agreement included all energy companies in the Netherlands that used coal, during its implementation. In this case, the market coverage is thus 100%.

For banking, insurance and pension funds, most relevant and larger companies adhere to the RBC agreements, with the exception of a number of smaller companies or funds.²⁷ Not all companies have international investments in their portfolio that fall within the scope of the agreements and this is taken into account in the market coverage estimates as communicated by the sectors. These three financial sector RBC agreements, together, have a very broad sector coverage.

The market coverage of the garments and textile agreement is assessed as medium. The textile agreement has dealt with lower revenues and a number of bankruptcies among signatory companies. As a result, the market share has decreased in the past years. While, in 2018, it was estimated at 48%, currently it is estimated between 40% and 45%.

²⁵ The number of members of signatory sector associations can be larger than the total number of companies in the sector, as sector associations might also have members that do not operate within the scope of the agreement (see also 4.3).

²⁶ The number of companies under 'Total' does not correspond with 'Totaal bedrijven' in the CBS statline data (in fact it is always lower). It is unclear why there is a discrepancy in the CBS statline data between the total number of companies in the sub-sector) and the sum of all size categories. The rounding to multiples of five as explained in footnote 13 cannot fully explain this difference.

²⁷ For example, there are 34 pension funds out of a total 219 identified pension funds in the Netherlands that do not adhere to the agreement. These funds are generally smaller in size with less than 2 million of relevant funds outstanding each.

The market coverage of the gold agreement is difficult to determine because the total revenue of companies procuring gold is unknown. Sub-sectors that are well covered include the independent jewellers and goldsmiths (through the code of conduct signed by relevant members of the two sector associations), wholesalers (4 out of 11), and in e-waste recycling. Sub-sectors with less coverage include larger jewellery chains (2 out of 10) and the electronics sector (only one large corporate player and one social enterprise).²⁸ An important sub-sector still missing is the financial sector, which holds gold bullion as an asset. Based on this information, we assess the market coverage as low to medium.

The floriculture agreement is considered to be a 'frontrunner's agreement' building on the commitment of particularly proactive companies. With nine company signatories (including the auction), clearly only a small fraction of the companies active in the floriculture sector have signed the agreement. This was also critically recognised by interview respondents, noting, for instance, that only one retailer joined the agreement and that the flower bulb sector, big exporters or florist retailers are not connected to the agreement. However, those agreement signatory companies are considered big players with significant leverage in the sector. Stakeholders interviewed particularly referred to the role of Royal FloraHolland as a critical gatekeeper in the floriculture sector. The auction represents the largest worldwide market place for flowers, accounting for more than 100,000 daily transactions through more than 4,000 members and an additional 2,500 customers that buy via the auction but are not members (Royal FloraHolland, 2019). As a result, interview respondents expressed the expectation that even if many flower sector companies are not part of the agreement, they will be affected through the auction. However, it should also be taken into account that more and more growers are bypassing the auction clock and selling to direct markets (Gebhardt, 2014). Furthermore, the auction is still looking for its role in implementing the agreement and what exactly it can do to promote due diligence in the sector. As per the agreement, the auction does not have the same due diligence requirements as other signatory companies. For these reasons, we assess the market coverage of the floriculture agreement as low.

The seven signatory companies in the metals agreement are mostly active in the metallurgic sector. Together they cover a small part of this sub-sector in terms of numbers, as more than 120 medium-sized to big companies are active in metallurgy ('Basismetaal'). The agreement is, however, signed by some of the most important metallurgic companies in the Netherlands, including Tata Steel. For the metal sector as a whole—which is much broader than only metallurgy—it is clear that coverage is still very limited. In part, this is due to the (very) broad scope of the agreement, which also includes most companies in the electronics industry, machine builders, and the manufacturers of transport vehicles. Hence, we assess the market coverage by the metals agreement as low.

The natural stones sector in the Netherlands predominantly consists out companies with less than five employees (310 out of 395). Most of the Dutch signatory companies of TruStone belong to the largest segment of the natural stones sector—those with 5-50 employees—and are, unlike most of the smaller companies, important importers of natural stons into the Netherlands. Currently 16—out of a total of 80 companies in the Netherlands within this size segment—signed the agreement. Stakeholders generally consider it a sensible approach to first focus on involving larger companies before encouraging smaller companies to also join. Importantly, the reach of the TruStone agreement goes beyond the private sector as five Dutch contract authorities have also signed the agreement: the municipalities of Amsterdam, Goes, Leusden, Nijmegen, and the Central Government Real Estate Agency.²⁹ With 380 municipalities in the Netherlands, the RBC agreement thus covers only a small share of the public procurement of natural stones. Taking both private and public procurement of natural stones into account, we assess the market coverage of the agreement as low to medium.

²⁸ The number of 11 wholesalers and 10 larger jewellery chains in the Netherlands is obtained from Van Gelder and Smit (2015).

²⁹ In addition, 29 Flemish contract authorities have also signed the agreement.

4.5.3 Reach relative to the number of companies in high-risk sectors

Overall, we can also compare the total number of companies adhering to the RBC agreements with the total number of companies in the high risk sectors as identified by KPMG. This comparison can give us some perspective on the relative scale of the RBC agreements and thus its relevance as a policy instrument to stimulate compliance by the Dutch private sector with the OECD Guidelines and UNGPs.

Again, we base our estimate of the number of companies in the high risk sectors on CBS statline data from the 2nd quarter in 2020. According to this database, the total number of companies in the Netherlands is about 1.87 million. However, we expect that the international RBC guidelines are not pertinent for many of these companies. We therefore narrow our estimate down in two ways. First, we exclude the 1.8 million small companies (with less than 10 employees) as we assume—following the proportionality principle of the UNGPs—that the extent to which these companies can be expected to implement due diligence is minimal. We know, however, that quite a number of small companies have signed an RBC agreement (particularly the gold and TruStone agreements). We thus only **include** medium-sized companies (with 10-99 employees) and large-sized companies (with 100 employees or more) in the Netherlands. Secondly, we only include the 13 most important high-risk sectors following the KPMG CSR Risk Assessment.³⁰

Based on these assumptions, we estimate the number of companies in **high-risk** sectors of the Netherlands for which the OECD **Guidelines** are pertinent at **31,270**. We therefore conclude that the RBC agreements, by reaching 494 companies, have only reached a small share (1.6%) of the companies in the Netherlands' high-risk **sectors**.

4.6 Outreach and growth

The sections above described the current reach of the RBC agreements, but potentially the reach of these agreements is higher. Below we discuss the growth ambitions of the different agreements, the activities implemented, the barriers to expansion, and the extent to which the agreements have been scaled up to an international level.

4.6.1 What are the outreach and growth ambitions?

Table 17 describes to what extent the RBC agreements have provisions on growth and international outreach activities. Most agreements—with the exception of coal and forestry—have agreed to pursue growth in the number of companies adhering to the agreement. Four agreements also have an explicit target for growth: garments and textile (from 55 signatory companies at the start to 200 companies at the end of the agreement); TruStone (from 3 to 357); metals (from 7 to 50); and gold (from 10 to 40). The other RBC agreements—floriculture, food, pension funds, banking, and insurance—will promote the agreement among non-adhering companies but do not have a specific target.

³⁰In terms of SBIs we include agriculture (01), oil and gas (06, 091), food and beverage industry (10, 11), textiles and clothing (13, 14), wood and paper (16, 17), chemical industry (19, 20, 21, 22), construction (23, F), finance (K), energy (D), metal and electronics (24, 25, 26, 27), wholesale (46), and retail (47, 56).

Table 17. Ambitions and targets for growth and international upscaling by RBC agreement.

	Agreement to stimulate growth?	Growth ambition at the end of the agreement	Focus on companies active in the Netherlands?	Confined to Dutch companies?	International outreach activities?
Banking	Yes	-	No	No	Yes
Coal	No	-	Yes	No	Yes
Floriculture	Yes	-	No	No	Yes
Food products	Yes	-	Yes	No	Yes
Forestry	NA	NA	NA	NA	Yes
Garments & textile	Yes	From 55 to 200	Yes	No	Yes
Gold	Yes	From 10 to 40	Yes	No	Yes
Insurance	Yes	-	Yes	No	Yes
Metals	Yes	From 7 to 50	No	No	Yes
Pension funds	Yes	-	No	No	Yes
TruStone	Yes	From 3 to 357	No	No	Yes

There are few provisions in the agreements on outreach. Typically, the parties commit to promoting the agreement by contacting and informing relevant parties, such as companies and sector associations. If all members of the signatory sector associations are not yet adhering to the agreements, the sector associations typically have committed to actively promoting the agreement among non-signatory member companies. In some cases, there specific outreach or communication working groups are installed, such as for the metals, gold and floriculture agreement.

All agreements focus on companies in the Netherlands—regardless of the whether they are Dutch-owned or not. Some agreements also actively encourage (non-Dutch) companies active in other countries to sign the agreement (TruStone and metals) or are *not* explicit as to whether they are exclusively targeting companies in the Netherlands (pension funds, banking, and floriculture). The TruStone agreement is, for example, an agreement that explicitly also targets Flemish companies and contracting authorities. The RBC agreement for metals seems to have the broadest scope and explicitly targets all metals companies, regardless of country. As of yet, it includes the European sector association for non-ferrous metals producers and recyclers, Eurometaux, as a signatory party and the International Zinc Association and the International Tin Association as supporting parties.

All RBC agreements have, however, some (brief) provisions on international outreach. Many of the agreements state they will (where possible) connect and collaborate with related international initiatives.³¹ In addition, the Government typically commits to outreach activities on an EU and OECD level to promote voluntary multi-stakeholder RBC initiatives and RBC for specific sectors, in general. The three agreements in the financial sector (banking, pension funds, and insurance) made it explicit that one of the goals of this Government effort is to create an international level playing field. The coal agreement also contained explicit deliverables for the Government, which the Ministry of Foreign Affairs annually reported on.

³¹ This the case for metals (EPRM and Bettercoal), gold (EPRM), floriculture (FSI), garments and textile (various), food products (not specified), forestry (STTC), TruStone (various, e.g. Earthworm), and coal (Bettercoal).

4.6.2 Realisation of growth ambitions

Figure 4 shows the realised growth in signatory companies for the four RBC agreements with growth targets. It also shows the targeted number of signatories that are to be achieved at different moments in time: one year from now for Garments and textile, four years from now for metals, and almost 4.5 years from now for TruStone. The growth target for the gold agreement was set two years after signing the agreement: July 2019.

The RBC agreement for the garments and textile sector has 69 signatory companies who, together, represent 92 labels. The target of 200 signatory companies (or labels) is thus unlikely to be achieved (also see Rutten & Oudendijk, 2019). Interviews with signatories suggest that this is also recognised in the agreement and that the growth target has internally been dropped. Focus during the remaining time of the agreement (1 year) will be placed on creating impact with the companies that are already part of the agreement. Furthermore, there are ideas for involving non-signatory companies without them having to sign and cooperate at project level. At this stage, however, these ideas are not yet translated into tangible outputs or outcomes.

TruStone is the most ambitious agreement in terms of growth: its goal is to have 357 signatory companies by October 2024. Considering it is relatively young, it has already achieved significant growth from three signatory companies in October 2019 to 32 currently (including both Dutch and Flemish companies). Much effort has been invested in preparing the ground for and promoting TruStone in the sector, for example via the RBC pilot project in the natural stones sector before the agreement was even signed.

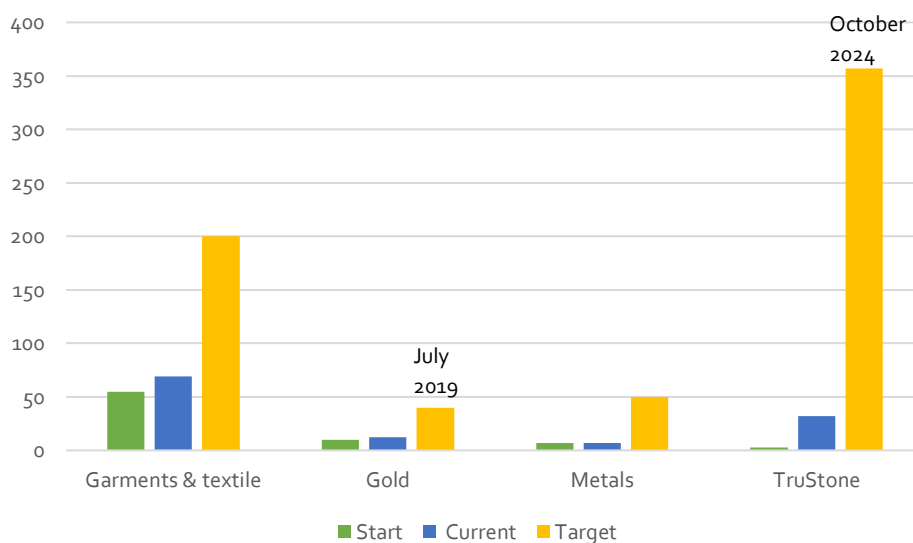


Figure 4. Growth in number of companies that signed the agreement (RBC agreements with growth targets)

The gold agreement has achieved limited growth in signatory companies: from 10 in 2017 to 12 in 2020. It has thus not reached its target of 40 signatory companies by 2019. However, meanwhile, it must be acknowledged that about 100 smaller goldsmiths and jewellers have signed a code of conduct derived from the agreement.

For the metals agreement, no growth in signatory companies has been yet realised. It is, however, too early to say whether outreach activities will be successful with four more years remaining to achieve the target.

Other agreements with mutations in the number of signatory companies are pension funds (which realised a growth from 73 to 81 signatory companies), banking (which saw a decrease from 13 to 9),³² and coal (which saw a decrease from 5 to 4).³³

4.6.3 Barriers to expansion

From Chapter 4.6.2, we can conclude that it is difficult for RBC agreements to expand in terms of signatory companies. Why is this the case? Based on the perspectives of interviewed stakeholders, we have identified four obstacles to expansion.

First, low growth is likely due to limited incentives and limited capacity of non-participant companies to join the agreement. It could be expected that companies with the strongest incentives and the most capacity already signed at the initiation of the agreement, which means that the companies that have not yet signed the agreement either have less incentive to join or have less capacity to make the required commitments.

It is, for example, acknowledged by the interviewees that the key obstacle to increasing market coverage of the garments and textile agreement is the relative unwillingness of international fashion retailers that operate on the Dutch market to sign the agreement. So far, a few internationals have signed the agreement but the majority have chosen not to join the agreement. This is reportedly because such companies operate in different countries and are therefore reluctant to join initiatives limited to one specific country. Interviewees indicated that many of the international companies are already part of various textile sector sustainability initiatives and certification schemes. Thus, the added value of joining a Dutch RBC agreement does not seem apparent to these companies. International companies also claim to be already familiar with or engaging in due diligence, with little need for support from a multi-stakeholder initiative. If anything, these international companies would prefer to join an initiative that caters to a larger consumer market, such as the German Partnership for Sustainable Textiles or await a European-wide initiative on due diligence.

A similar observation is made in the Dutch flower sector, which is also highly internationally orientated, and is characterised by different 'RBC-related' initiatives, such as FSI. An additional problem for the flower sector is that some key flower retailers—supermarkets in particular—are less interested in a flower-specific agreement as flowers constitute only a small part of their portfolio and hence are typically not a priority to them.

Jewellers indicate that there is limited incentive to join the gold agreement as they perceive a lack of financial return on investment. Interviewees suggested that the agreement offers little in terms of strengthening their commercial proposition. There is, for example, no collective branding based on the agreement and no certificate that could be used to differentiate them from non-signatory companies. Interviewed companies suggested that for many of their peers, the added value of the RBC agreement is not sufficiently clear.

In response to similar concerns, the TruStone agreement has designed a logo, which signatories can use to make their signatory status visible and thus their RBC commitment and efforts. It is acknowledged that the logo could give the wrong impression that TruStone is a certification scheme, but this is taken for granted as it is in response to concerns raised by company signatories about 'greenwashing' (i.e. companies that have not signed TruStone but benefit, for example, from a more positive image of the sector). Companies in the TruStone agreement indicate that there is still limited incentive to invest in RBC

³² This was a result of two mergers, one company joining the insurance agreement instead, and one international company not being able to actively participate in the agreement.

³³ One company closed down their coal plant in the Netherlands and therefore discontinued their engagement in the agreement.

(and thus to join the agreement) for companies that engage in public works as long as public procurement in the sector is guided by price and not by compliance with RBC guidelines.

Even if companies have an incentive to participate, the incentive might not be strong enough to overcome capacity constraints (financial means and time) that smaller companies particularly face. Capacity barriers and concerns for high costs in terms of fees and time investments are, for example, observed in garments and textile, metals, TruStone, food, and gold.

Second, there seems to be a limited strategy for persuading companies to join the agreement. Most RBC agreements have a button on their website that says 'doe mee! / sign up now!' but there is limited publicly available promotional material for potentially interested companies (e.g. brochures, videos, newsletters, social media etc.). With the exception of TruStone, there is also not a commonly accepted English name and abbreviation for the agreements, nor do the individual RBC agreements have an easily recognisable logo. In addition, the outreach activities seem to be fairly ad hoc; much is up to the initiative of the individual parties in reaching out to others and there is little knowledge of each other's efforts. Only a few agreements have dedicated working groups to coordinate outreach and communication (metals, floriculture and gold). This lack of strategy was also noted by IOB (2019).

There are some clues on what such an outreach strategy should entail. The German Partnership for Sustainable Textiles (PST), for example, has specific promotional material (including a logo and a consistent name and abbreviation) and a strategy whereby the German Minister for Development Cooperation invites companies to join the agreement. Another example of a potentially fruitful approach comes from the metals agreement, which is in the process of linking its work with the website www.grondstoffenscanner.nl, an initiative by the Ministry of Economic Affairs, which allows companies to check whether there are any financial risks related to the commodities they procure and rely on for their products or services. Following a collaboration with the metals RBC agreement, it will now also contain a section on the potential RBC risks related to certain minerals and it will direct companies to the metals agreement in case they want to address these risks.

Third, some interviewees indicate that there is limited capacity for outreach activities within the agreement. Participants of the TruStone agreement indicate that a broader set of stakeholders need to become 'TruStone ambassadors' and make investments in lobbying and outreach.

One interviewee indicated that mobilising and persuading companies to join an RBC agreement requires skills that are not necessarily present among signatory party representatives. It is argued that promoting the agreement requires different skills than were needed to set up the agreement: it requires the ability to sell a business proposition and to show it is in the interest of companies and sector associations to join the agreement.

Fourth, the volatility and the high number of bankruptcies in the textile sector made growth particularly difficult. Over the course of the garments and textile agreement, 17 companies have exited the agreement due to bankruptcy, business termination or takeover by another company.

4.6.4 Evidence for international scale up

Three RBC agreements have, to some extent, scaled up to an international level: TruStone, metals and, particularly, garments and textile.³⁴

³⁴ While other agreements have engaged in international outreach activities, such as through collaboration with international certification schemes, this has not led to an upscaling of these RBC agreements to an international level to the extent that companies or sector associations not active in the Netherlands started to adhere to the Dutch RBC agreement or other similar multi-stakeholder agreements in other countries.

TruStone is a bilateral agreement between the Netherlands and Belgium (Flanders) since it was started. It is also explicitly included in the agreement that the initiative will be scaled up and cooperation will be sought with other European initiatives and that, eventually, a road-map for scaling up national initiatives to EU level will be developed. The importance of involving Germany was mentioned by most interviewees and specifically highlighted in the agreement text. TruStone signatories that export to Germany (such as to German municipalities) are requested to provide RBC certificates. Some companies have requested TruStone's secretariat to—at least—inform Germany about TruStone so that, in the future, being a TruStone signatory would suffice. Finally, interviewees attested that the Flemish Government took on the Dutch RBC agreement approach by way of TruStone, and, as a result, Flanders is expected to sign agreements in other sectors.

The RBC agreement on metals also includes the European sector association for non-ferrous metal producers and recyclers, Eurometaux, as a signatory party and the International Zinc Association and the International Tin Association as supporting parties. However, as of yet, none of the member companies of these sector associations have individually signed the agreement (except for those that are also Dutch VNMI sector association members).

In January 2018, the RBC agreement on garments and textile signed a collaboration agreement with its German sister initiative, PST, to support companies in implementing due diligence by harmonising sustainability requirements. One of the collaboration components is the *associated membership model*, which allows companies to participate in both initiatives under simplified conditions. In order to join the Dutch garments and textile agreement, PST members have to submit a list of their production locations of direct suppliers to the Dutch secretariat and accept being subject to the complaint mechanism for third parties. For an associated membership to PST, members of the Dutch agreement will have to publish their action plans and progress reports on the website of the German partnership. Currently, there are about five to six associates of the garments and textile agreement with the PST, and two PST associates with the Dutch agreement. At the same time, it is recognised that the growth potential of dual membership is limited as it is only interesting for companies active in both markets.

Another important element of collaboration with the PST can be found in the joint lobbying at European level, together with the Sustainable Apparel Coalition (SAC). The purpose is to influence the European Commission to take steps for a level playing field based on the OECD Guidelines. This should avoid a comparative advantage for companies not adhering to the international social and environmental standards as promoted by PST and the garments and textile agreement (van Seters, 2018). It is also supposed to facilitate the engagement of companies operating in different EU Member States (Ashraf & van Seters, 2019). Finally, joining forces at EU-level can provide more leverage to influence suppliers to improve production practices, and encourage and support governments from sourcing countries to put in place an enabling policy environment (van Seters, 2018).

To this purpose, the garments and textile agreement and PST embarked on an 'EU roadshow' and organised events in Paris, Brussels, Milan and Geneva (Ashraf & van Seters, 2019). Importantly, the Dutch agreement, PST and SAC cooperate on a harmonised assessment framework for company due diligence based on the OECD Guidelines. Each of the three initiatives has developed assessment and reporting frameworks based on the OECD Guidelines and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. In 2018/2019, the three initiatives participated in the OECD alignment assessment to contribute to a common understanding of due diligence in the garment sector (results for the agreement on garments and textile are expected to be published soon; OECD, 2020). The results and recommendations of the OECD alignment assessments could provide the basis for further alignment and cross-recognition between initiatives which, in turn, can reduce administrative and reporting burden for EU-based companies on due diligence.

Ashraf and van Seters (2019) caution that the garments and textile agreement needs to carefully consider what kind of harmonised model would be most beneficial at the EU level. They suggest that copy-pasting core elements of the Dutch agreement to the EU level (i.e. setting a joint multi-annual agenda with targets and indicators, coupled with annual due diligence reporting and monitoring) risks being less effective than it is at national level. It may lead to downward convergence. The political feasibility can also be questioned, given the limited interest of a majority of EU Member States and their constituencies so far.

Chapter 5



5 Progress on due diligence in the RBC agreements

5.1 Key findings

- ❖ Available evidence paints a mixed picture of progress on due diligence across RBC agreements.
- ❖ There is clear progress in the case of banking and garments and textile due to the RBC agreements, which particularly holds for the first steps of the due diligence cycle—establishing RBC policies, assessing risks, and communicating about company policies. For the banking agreement, adhering banks already had similar processes in place and were therefore able to advance relatively quickly. In the agreement on garments and textile, companies have largely progressed according to the envisaged timeline with more than 80% of companies complying fully or mostly with the set requirements of the agreement.
- ❖ Slow and mixed progress can be observed in the gold agreement: about half of the companies have an RBC policy and have identified risks, but reporting and other steps in due diligence are not yet widespread.
- ❖ In the coal agreement, companies relied heavily on Bettercoal but there is little information on the due diligence processes of individual companies and results achieved.
- ❖ For the remaining RBC agreements, there is no evidence of progress made yet. In the case of the recently signed agreements (metals, floriculture, TruStone), this was also not expected. For the agreements from 2018 (food products, insurance, pension funds), the baseline exercises show the diversity of companies, with larger companies often having some type of due diligence processes in place (although not necessarily in line with the OECD Guidelines) and smaller companies being largely newcomers to due diligence.
- ❖ The forestry agreement is a very different case in point, with its sector-level focus on the increased uptake of certified timber and wood. No commitments were made regarding due diligence by companies and tentative attention to this topic has only recently started.
- ❖ Independent monitoring of companies' performance on due diligence requirements is important for the credibility of RBC agreements, both internally and with external stakeholders.
- ❖ However, there are limitations in what RBC agreements can and do monitor, particularly with regard to the quality of companies' due diligence processes in practice. Concerns raised by CSOs refer to the lack of oversight of individual company performance due to confidentiality protocols and external assessments that question whether companies actually address risks rather than 'merely' identify and assess risks.
- ❖ While the evaluation cannot comment on the quality (thoroughness) of companies' due diligence, various factors were identified that influenced companies' compliance with due diligence requirements of the RBC agreements.
- ❖ RBC agreements can help to reduce the complexity of due diligence for individual companies, e.g. through support tools and knowledge-sharing activities. This is particularly relevant for companies with little or no prior experience in this regard and for companies experiencing capacity constraints to implement due diligence, such as SMEs.

- ❖ More important for company compliance, however, are critical stimuli for companies, such as reporting requirements, internal and external pressure (e.g. from NGOs, unions), and top management commitment. These factors are especially pertinent in sectors where there are few economic incentives, e.g. where business models are based on low margins (and often high production volumes) in fairly saturated markets and/or where demand for due diligence, either by clients or consumers, is low.
- ❖ Due diligence is a process that businesses do not (yet) perceive to be connected to improved financial performance. While proponents often argue that addressing human, labour and environmental risks should ultimately reduce risks to businesses and hence, improve business performance, this is an assumption yet to be tested.

5.2 What do companies commit to?

The general expectation of RBC agreements is that companies implement due diligence in line with the OECD Guidelines (SER, 2014; MoFA, 2014), as a risk-based process to avoid and address adverse impact associated with business' operations, supply chains and other business relationships (OECD, 2011). The OECD has meanwhile specified this as a process involving: (1) drawing up RBC policies; (2) identifying risks; (3) addressing risks; (4) monitoring the implementation of these measures; (5) reporting on the implementation of due diligence; and (6) promoting access to remedy (OECD, 2018).

Most agreements translate the due diligence objectives into a staggered approach of company commitments, requiring compliance with different steps of the due diligence process at different moments in time. For example, companies that have signed the TruStone agreement need to provide a complete list of first tier suppliers within six months and implement due diligence within one year. Within these commitments, the RBC agreements recognise that due diligence is not only an ongoing process, but crucially a learning process whereby depth and scope of implementation are expected to increase over time.

The most extensive company requirements can be found in the agreements on garments and textile agreement, metals and TruStone (Figure 5). These agreements demand companies to report on progress in the implementation of due diligence by delivering progressively more insights on their supply chains, risks found and actions taken. In the case of the metals agreement and TruStone, the feasibility of this approach is yet to be shown; in the garments and textile agreement, the staggered approach has facilitated progress by companies, as will be shown later.

Contrasting such elaborate requirements is the forestry agreement, where no concrete commitments on due diligence can be found and certified timber is considered an instrument for RBC compliance. The presumption is that certification schemes offer quality assurances for sustainability and RBC aspects, which are constantly being tested in practice and tightened where necessary (Box 5). While the forestry agreement does mention an ambition to identify and take actions on structural RBC risks not covered by the EU Timber Regulation and existing certification schemes, no company commitments have been formulated.

Box 5. Promotion of certified timber as an instrument for RBC compliance

The forestry agreement aims to promote the use of certified timber and wood under the assumption that certification schemes offer quality assurances for sustainability and RBC aspects. An RBC working group therefore commissioned a study to assess the extent to which FSC and PEFC standards adhere to the human rights and labour rights provisions included in the UNGPs, the ILO Fundamental Conventions and the OECD Guidelines. The study (Kusumaningtyas, 2019) found that FSC and PEFC standards for *forest management* fully adhere to the UNGPs and the ILO Fundamental Conventions, but not yet fully to all the provisions in the OECD Guidelines. The FSC and PEFC standards for *the Chain of Custody* do not fully adhere to the UNGPs, OECD Guidelines or ILO conventions. The aim of the Chain of Custody certificates is to guarantee the traceability of sustainably produced timber, enforcing the separation of certified timber from non-certified material throughout the supply chain, but not to address any RBC risks in the supply chain.

Both FSC and PEFC are currently reviewing their standards to improve the mitigation of social risks (e.g. labour rights and land rights). This is part of a regular cycle, and is not directly the result of the commissioned study (Kusumaningtyas, 2019). However, the study came at an opportune time and is being used to review the certification standards. It is unclear at this stage to what extent the review process will lead to filling the gaps of certification on RBC compliance.

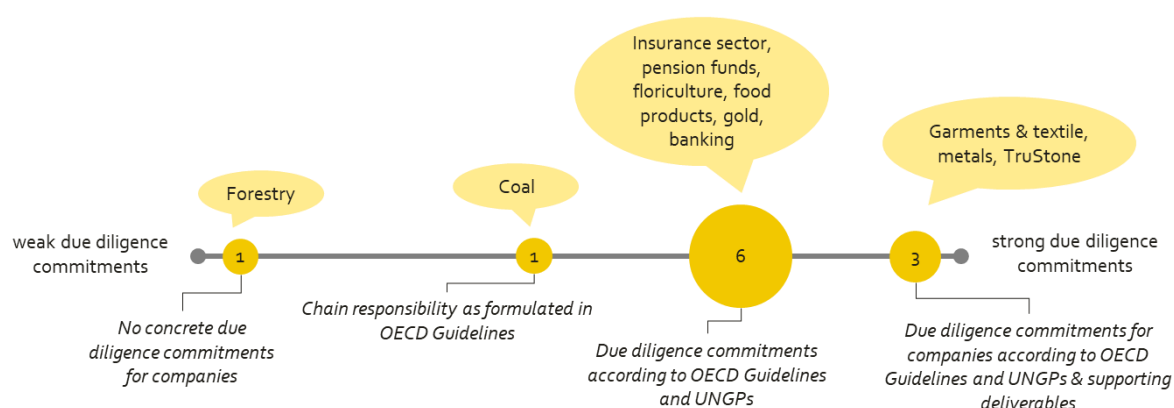


Figure 5. Extensiveness of due diligence commitments in RBC agreements

The financial sector agreements have a specific scope within which due diligence commitments apply: investment activities for insurance and pension funds; and corporate lending and project finance for banks. Moreover, the banking agreement focuses on human rights due diligence. Both IOB (2019) and interviews for this evaluation suggest that this delineation was subject to considerable contestation between banks and NGOs during the negotiation phase. While the KPMG report (2014) identifies a variety of high risks for the financial sector, including environment, climate or corruption, the participating banks argued that there are already a variety of initiatives that deal with these risks. Therefore, they requested a specific focus on human rights, which NGOs were not able to counter. Company's responsibilities can also be further worked out in the course of the agreement, as in the banking agreement which specified banks' responsibility for remediation through a collective exercise (Box 6).

Box 6. Clarification of banks' responsibility for remediation

Before and during the period of the banking agreement, the leverage of banks and their potential relation to a negative impact – including implications for access to remedy – was widely discussed at different international platforms (e.g. OECD, 2017; Thun Group, 2017; OECD, 2019a). This topic was also addressed by the banking agreement, which concluded that banks can both 'contribute to' or be 'directly linked' to adverse impact. In situations of *linkage*, banks have a responsibility to use and build their leverage to influence the actions of other parties that may have caused or contributed to the negative impact. In situations of *contribution*, banks have a responsibility to use and build their leverage with other responsible parties, but also to contribute to the remedy themselves (Dutch Banking Sector Agreement, 2019a). Multiple CSOs considered the establishment of 'contribute to'-responsibility by banks as one of the most important outcomes of the banking agreement.

In this context, the recent complaint against ING at the Dutch National Contact Point (NCP) is an interesting case in point. The complaint, filed in July 2019 by NGOs part of the Friends of the Earth network, argues that ING has breached the OECD Guidelines by contributing to adverse environmental, human rights, and labour rights impacts by ING's palm oil clients or their subsidiaries. The complaint is the first one that charges a bank with having *contributed to* harms of its clients. While the complaint is still pending, the NCP believes this example will help clarify the OECD due diligence recommendations for the financial sector (OECD Watch, 2020).

All RBC agreements (except for coal and forestry) contain clauses specifying that due diligence commitments may hold to different degrees for the involved companies, in line with the OECD Guidelines. This explicitly recognises that companies have different capacities and responsibilities to implement due diligence, e.g. depending on their size, experience and position in the value chain. There are no indications, however, that smaller companies have fewer commitments than larger companies. At the same time, it is often unclear how differences in company circumstances are taken into account during monitoring. For example, in the agreement on garments and textile, "the review process of textile companies is not sufficiently tailored to assess the range of business models within the membership, particularly companies that own their own production and larger enterprises that may have more complex structures" (OECD, 2020). This reveals the complexity of due diligence assessments and finding an approach that balances standardisation versus customisation.

5.3 How is this assessed and monitored?

Four different categories of monitoring provisions in RBC agreements can be distinguished (Table 16).

A1. Independent monitoring by SER

Four agreements (garments and textile, TruStone, metals and, to some extent, gold) have tasked the secretariat (SER) with annually monitoring companies. This is most extensive in the garments and textile agreement, which requires companies to annually complete an extensive e-questionnaire, an action plan, lists of production sites and materials used in their products. Based on the submitted information, the secretariat has an in-depth assessment conversation with the company. As such, the secretariat has a detailed overview of the performance of individual companies.

Reporting on company progress (so far on garments and textile and gold, with metals and TruStone not having published reports yet), is only done in an aggregate and brief manner to safeguard the anonymity of individual companies.

A2. Independent monitoring by external committee

The three financial sector agreements have each installed an independent monitoring committee comprising recognised experts (e.g. university professors), who assess companies' progress on an annual basis.

It is noticeable that agreements with an independent monitoring committee report in detail on companies' performance. This holds, at least, for the 2019 reporting on the agreements on banking (progress) and the baseline exercises for the insurance and pension funds agreements. The reports offer detailed accounts of companies' aggregate performance against the requirements of the agreement. This attaches high credibility to the reporting, also because the individual members of the monitoring committee vouch for reporting with their own reputation.

B. Partially independent monitoring

In the food products agreement, the main responsibility for yearly monitoring lies with the two biggest sector associations CBL and FNLI. Only the monitoring for members of the smallest sector association (KNSV) has been allocated to the secretariat of the agreement. This is thus partly-independent monitoring, which also reflects in the reporting on the baseline exercise, where considerable differences can be observed in the different sector reports. Reports done by third parties have a clear analytical orientation (Sustainalize, 2019; SER, 2019), whereas the CBL monitoring offers few details that explain the monitoring findings (CBL, 2019).

Random checks for verification in the food products agreement are set to take place during independent mid-term and end-term evaluations.

C. No monitoring provisions

The coal agreement did not, in itself, contain any monitoring and assessment provisions. Companies were only obligated to report on (joint) activities and achievements in yearly collective progress reports. Assessment of companies' progress on their commitments did not take place. This has been criticised by external NGOs throughout the duration of the agreement. Instead, the coal agreement 'outsourced' its monitoring activities to the Bettercoal initiative, in which all signatory companies participated. Bettercoal requires its members (energy companies) to complete annual self-assessments, whilst participating suppliers (mining companies) are required to undergo third-party audits (full assessment cycle: every five years). While summaries of supplier audits are published by Bettercoal, the performance of individual energy companies is not made public.

The forestry agreement does not comprise any compliance checks on companies' due diligence. Instead, the success of the agreement is defined in terms of increasing supply and demand of certified sustainable timber and wood (IOB, 2019).

Table 18. Compliance checks by RBC agreements

RBC Agreement	Category	Compliance monitoring and assessment	Non-compliance mechanism	Mid-/end-term evaluation	Published results
Banking	A2	An independent (external) monitoring committee has been appointed to measure the extent to which commitments have been implemented. Where needed, the committee can demand internal audit reports to verify the bank's information. The committee reports on a confidential basis to the Steering Committee on its findings.	Yes. Cases of non-compliance will be brought forward to the Steering Committee, with authority to issue binding rulings (but not enforceable by law).	No	Summary of 2017 published; 2 nd monitoring of 2018 published. Final monitoring not yet published.
Coal	C	There was no monitoring of companies' compliance in the agreement; energy companies only reported jointly on yearly activities. Companies and (some of their) suppliers did, however, report to the Bettercoal	No	No	Aggregate reporting available for 2016, 2016/17 and 2017/18.

		initiative, where suppliers are monitored against continuous improvement plans.			No monitoring data on company compliance.
Floriculture	n/a	The agreement aims to hire an external consultant to check companies' activities and processes on an annual basis and act as a coach for capacity development. Results will be confidential and conveyed at aggregated level to the Steering Committee. Concrete reporting requirements of companies are not yet clear.	No. Cases of non-compliance will be brought forward to the Steering Committee.	No	No monitoring data available yet (agreement only started in September 2019)
Food products	B	Sector associations are tasked with monitoring their members yearly progress to having due diligence systems in place. Individual company responses are consolidated in an aggregate report to the Steering Group. Random verification checks can be made by an external mid-term and end evaluation.	No. Cases of non-compliance will be brought forward to the Steering Committee.	Yes (mid-term and end-term)	Baseline monitoring data available per sector association (year 1 / 2019)
Forestry	C	There is no compliance monitoring on due diligence.	Not applicable	No	Not applicable
Garments & textile	A1	The secretariat monitors and assesses companies' commitments on an annual basis. Based on the submitted information of companies, the secretariat has an in-depth assessment conversation with the company. After the conversation, companies have two months to improve on possible severe shortcomings.	Yes. Non-compliance can be brought forward to Disputes & Complaints Committee with authority to issue binding rulings (case rulings are published online)	Yes (mid-term and end-term)	Data on year 1 (2016/17) and 2 (2018) available in aggregate form. Year 3 upcoming. MTE published. List of production sites published on a yearly basis.
Gold	A1	Monitoring is conducted by the 'Due Diligence' Working Group to check individual compliance, with secretariat support. Sector associations follow-up on the reporting by their members.	No. Cases of non-compliance will be brought forward to the Steering Committee.	No	(brief) data on year 1 (2017/18) and (more extensive) data on year 2 (2018/19) available in aggregate form.
Insurance	A2	An independent (external) monitoring committee has been appointed to measure the extent to which commitments have been implemented. The committee can request additional information over and above what companies deliver.	No. Cases of non-compliance will be brought forward to the Steering Committee, with possibility for third-party mediation.	No	Baseline monitoring data available (year 1 / 2019)
Metals	A1	The Steering Committee oversees annual monitoring processes, at individual company level, collective actions and process level. The secretariat is tasked with consolidating individual maturity assessment results and improvement plans at aggregate level. Annually (subject to resource availability) a randomly selected number of companies will be assessed on their due diligence efforts, with the help of an independent expert.	No. Cases of non-compliance will be brought forward to the Steering Committee, with possibility for third-party mediation and decision by General Assembly.	To be decided after 2.5 years	No monitoring data available yet
Pension funds	A2	An independent (external) monitoring committee has been appointed to measure the	No. Cases of non-compliance will be	No	Baseline monitoring data

		extent to which commitments have been implemented. The monitoring committee can request additional information over and above what companies deliver.	brought forward to the Steering Committee, with possibility for third-party mediation.		available (year 1 / 2019)
TruStone	A1	Monitoring is conducted through yearly progress reporting and submission of deliverables to the secretariat.	Yes. TruStone aims to establish an independent Disputes & Complaints Committee with authority to issue binding rulings	Yes (mid-term and end-term)	No monitoring data available yet

Assessment frameworks

Most RBC agreements, except for coal and forestry, have developed or will develop assessment frameworks against which they monitor company compliance. These frameworks are usually questionnaires based on the OECD Guidelines and UNGPs which companies need to complete. The agreement on garments and textile has recently undergone an alignment assessment against the OECD Due Diligence Guidance, which found only “very few points of non-alignment” vis-à-vis the OECD’s approach (OECD, 2020). Other agreements also specifically state that their assessment frameworks follow the OECD guiding documents.

Nonetheless, there are limitations in the extent to which the assessment systems of RBC agreements are able to detail the quality of companies’ due diligence processes. This is because the majority of questions that companies have to answer are designed to measure whether certain due diligence aspects are in place (yes/no) but say little about the extent to which the due diligence systems are functioning and are effective.

For instance, this point was raised in the case of the agreement on garments and textile. While the OECD’s alignment study generally praised the assessment framework, the study argued that there is little monitoring on how companies address risks and engage with production locations proportionate to the severity of the harm (OECD, 2020). Similar findings were raised by the external mid-term evaluation of 2019 (Rutten & Oudendijk, 2019), as a result of which the assessment framework is currently under revision.

Self-reporting as the basis of assessment

Self-reporting by signatory companies constitutes the cornerstone of the monitoring systems of the RBC agreements,³⁵ with rather limited opportunities to investigate companies based on third-party information. In view of confidentiality clauses, the performance of individual companies against the assessment frameworks cannot be traced by the public—nor by other parties to the agreements, unless they conduct in-depth local research to trace individual companies’ supply chains. This has been criticised by external NGOs for lack of transparency (e.g. SOMO & SKC, 2019; Solidaridad, 2019a; MVO Platform, 2020). NGOs and unions participating in RBC agreements have pleaded for greater transparency. This, however, was not deemed feasible in the view of client sensitive and commercially competitive information, which can be part of what companies need to internally report on.

The reliance on self-reporting implies that monitoring depends on companies’ cooperation and the quality of the submitted information.

³⁵ The agreement on garments and textile differs to some extent, as the secretariat assesses and scores the self-reported information.

Firstly, there is high dependence on companies submitting the required information. For the gold agreement, for example, not all participating companies have submitted the required monitoring data (85% for the last monitoring round). However, interview respondents suggested that such non-compliance is not sanctioned based on the agreement's emphasis on voluntary participation (Boot & Grootelaar, 2020). The baseline monitoring exercise of pension funds and insurance had (relatively) high response rates of 90% and 73%,³⁶ respectively, whereas a similar exercise in the food products agreements elicited a low response rate, especially from members of the food industry (FNLI: 6% response rate) and spices (KNSV: 10 companies responded). Also, in the banking agreement, the monitoring committee reported a lack of commitment and urgency to submit information by some adhering banks (Dutch Banking Sector Agreement, 2019b). Interviewed banks, by contrast, argued that the required information was cumbersome to collect and constituted a high administrative burden.

Secondly, limited response rates can distort the representativeness of the information obtained; for example, by having primarily frontrunner companies that complete the required questionnaires whilst laggards are not captured in the data. This carries the risk of inaccurate portrayal of companies' progress.

Thirdly, even in cases of a high response rate and companies submitting the required information, this does not necessarily imply quality information. In the banking agreement, the monitoring committee stated that "in too many instances, the SER had to ask additional questions to add, clarify or specify information. The information given was, at times, too general and inaccurate where sample checks by the monitoring committee did not confirm information given by the adhering banks" (Dutch Banking Sector Agreement, 2019b). Interviewed banks, however, criticised the lack of direct interaction with the monitoring committee to discuss the quality of information submitted and thereby derive lessons learned.

5.4 How are companies supported in their due diligence?

Most RBC agreements have developed or are in the process of developing guidance and a range of tools to support companies in their due diligence, either through working groups on due diligence or by the secretariat, supported by NGOs, unions and sector associations.

The garments and textile agreement offers the most extensive support infrastructure to companies. In collaboration with CSOs and support parties, the secretariat offers a broad range of tools, guidance documents and templates on a variety of topics. The secretariat also organises, together with other agreement parties, various workshops on due diligence and sector-specific themes. In 2019 alone, 29 workshops took place (Agreement on Sustainable Garments and Textile, 2020). The 2019 mid-term evaluation of the textile agreement found that the support has been important in making progress on due diligence (Rutten & Oudendijk, 2019). However, the evaluators indicated that tools and reports were not widely used, whereas face-to-face events were considered most useful by companies. According to our interviews, the annual assessment meetings between the secretariat and company representatives (including top level management) are the most appreciated form of support. According to our interviews, the annual assessment meetings between the secretariat and company representatives are the most appreciated form of support to discuss due diligence progress and create company-level buy-in. Related to this point, in the banking agreement, interviewed banks voiced dissatisfaction with the lack of direct interaction with the monitoring committee to discuss progress on due diligence.

In other RBC agreements, support provided by the secretariat is less extensive (in the coal agreement, there is even no secretariat) and working groups are the most important avenue for support to companies (the exception is the food products agreement, where much support thus far has been provided by sector

³⁶ Of the 78 respondents, 23 (30%) were not able to fill in the questionnaire due to not having assets invested in the Netherlands (foreign insurers) or not having invested assets (small insurers).

associations). There are two main types of support provided by working groups. On the one hand, they develop practical guidance for companies (e.g. in gold, insurance, banking, pension funds, food products, metals, TruStone (expected)). For example, a working group in the gold agreement developed a 'due diligence for dummies' document, which was specifically appreciated by companies with no experience in due diligence. In addition, a code of conduct was developed to facilitate RBC by non-signatory small companies (Box 7). In the insurance sector agreement, a working group developed a due diligence guideline focusing on five specific ESG themes not sufficiently covered by the OECD Guidelines. Generally, interviewees were satisfied with the guidance documents developed, indicating that usefulness is based on how well the documents are targeted to companies' specific situations and whether they offer easy hands-on guidance that companies can resort to when they start due diligence processes.

Box 7. Getting small jewellers and goldsmiths on-board

In the gold agreement, the two sector associations FGZ and NGG have developed a code of conduct to stimulate RBC among jewellers and goldsmiths with limited size or management capacity. Members who sign the code of conduct work to ensure that the gold they sell is responsibly sourced and from suppliers who can demonstrate that they engage in due diligence. Code signatories are required to ask their suppliers whether they are member in the gold agreement and comply with the OECD Guidelines. Signatories also need to publicly declare based on which standards they purchase gold. In April 2020, 100 SMEs had signed the code of conduct, up from 64 in the previous year. Signatories include 70 jewellers from FGZ (10% of their members) and 30 goldsmiths from NGG (around 50% of independent goldsmiths). The recent growth in code signatories suggests that there is interest by SMEs, although no data on actual reporting is available from this group.

On the other hand, working groups serve as vehicles to conduct collective exercises, such as joint risk assessments and case discussions (e.g. floriculture, metals, banking, insurance). For instance, in the floriculture sector, a working group has been established to make floriculture product flows visible and map the main risks in countries and areas where Dutch companies source from. Stakeholders expect that this will facilitate companies' own risk assessment and also lead to enhanced transparency of production locations beyond first tier suppliers, at least at an aggregate level. The most extensive exercises for collective risk assessments took place in the banking agreement through the value chain assessments (palm oil, cocoa, gold, oil and gas). These were appreciated by all participating parties, but did lead to tensions between banks and NGOs. Whereas NGOs called for concrete actions to address the issues identified, banks referred to the fact that the RBC agreement did not contain any commitments for follow-up actions and therefore considered the request of NGOs to go beyond the required deliverables. Thus, collective risks assessments can also lead to unanticipated contestation in RBC agreements.

In the forestry agreement, a working group on RBC risks organised a workshop in May 2019 to discuss the way forward on how companies can implement due diligence to conform to the OECD Guidelines, above and beyond certification standards. This was in response to the commissioned report on certification and RBC risks (Kusumaningtyas, 2019), which indicated that RBC risks are not sufficiently covered with Chain of Custody certification. The working group is currently developing guidelines for companies using timber/wood on how to comply with due diligence covering all steps (beyond certification). This is the first concrete support for companies on due diligence by the forestry agreement—reiterating the different focus of the forestry agreement compared to other RBC agreements.

Support on due diligence was also limited in the coal agreement, except for two workshops with an external party (SHIFT) in the final year of the agreement.

For most sector agreements, there is limited evidence of direct bilateral support to companies from NGOs and unions. For example, this was an explicit point of critique of the 2019 mid-term evaluation of the agreement on garments and textile (Rutten & Oudendijk, 2019), as a result of which the secretariat has since engaged in increased match-making between companies and NGOs/unions (Convenant Kleding en Textiel, 2020). In the food products agreement, NGOs and unions have limited direct contact with

companies and few insights on the issues that companies encounter in their due diligence due to the strong role of sector associations as intermediaries. Interviewed private sector stakeholders, in turn, voiced doubt that the participating NGOs have the relevant expertise to support companies in implementing due diligence systems. In the banking agreement, the monitoring committee observed a supply and demand gap between adhering banks and other parties (Dutch Banking Sector Agreement, 2019b). While the committee recognised that NGOs and unions could have been able to supply information on a case by case basis through their experts and networks, one obstacle was that banks were unable to request information on specific cases due to their client confidentiality duty. Moreover, the activities of NGOs under the Fair Finance Guide (FFG) created trust issues in the banking agreement. Several interviewed banks argued that it was difficult to collaborate in a constructive manner with NGOs and share information with each other, while, at the same time, the same organisations were campaigning against banks through other platforms.

Thus, different barriers (can) limit direct support by NGOs and unions to companies in RBC agreements, such as confidentiality clauses and commercially sensitive information, limited trust between companies and NGOs, limited awareness or confidence in NGOs' expertise, and lacking insights by NGOs into company-specific risks. This requires specific efforts at match-making, which so far have only been observed in the agreement on garments and textile as a recent activity.

5.5 To what extent have companies progressed on due diligence?

The IOB evaluation (2019) recognises the importance of improved compliance with due diligence requirements as an indication of the RBC agreements' overall success. As can be expected amidst the diversity of RBC agreements and their status of implementation—from 'just started' to 'concluded'—progress on due diligence varies significantly (Table 19).

RBC agreements that have recently been signed are able to report increased awareness as a first achievement in promoting due diligence among companies, which is based on the recognition that many companies have had limited prior awareness of due diligence processes in line with the UNGPs and OECD Guidelines. This has been noted for the agreements that were signed in 2019 (floriculture, metals and TruStone) for which, otherwise, no evidence of individual company progress can be expected at this stage.

There is also yet little evidence available on the reported progress for the agreements from 2018 (insurance sector, pension funds and food products). Baseline monitoring suggests that, prior to the RBC agreement, some companies had already engaged in the first steps of due diligence (developing RBC policy, identification of risks and public reporting)—mostly larger companies in all three sectors. To also facilitate other companies' progress, the agreements recognised the need for a better common understanding on how to apply due diligence and clarify concrete steps to be taken by companies.³⁷

The RBC agreements that have been in place since before 2018 show a mixed picture on due diligence. While the agreements on garments and textile, banking and, to a lesser degree, gold are able to report progress on companies' due diligence, this is not the case for coal and forestry.

In the gold agreement, monitoring data suggests that due diligence implementation by companies is slow, especially among jewellers, traders and goldsmiths, which are generally SMEs (Convenant Verantwoord Goud, 2019). Progress mostly pertains to the first steps of due diligence and does not seem to go beyond the smelting process (Solidaridad, 2019a). Larger industry actors, on the other hand, indicated having functional due diligence systems in place.

³⁷For instance, in the case of the insurance sector agreement, the monitoring committee has called on the parties to jointly discuss and clarify what exactly is meant by integrating ESG due diligence into investment policy.

In the banking agreement, compliance by large T1 (type 1) banks with human rights due diligence requirements is at 100% and a bit lower for smaller T2 banks, according to the 2018 monitoring data.³⁸ The monitoring report (2019) states that banks have progressed well on human rights policy development and human rights due diligence implementation. At the same time, the last monitoring report stresses that despite the high rates of compliance, “it is illusionary to pretend that the process [of due diligence] can be immediately and completely implemented in all its aspects” (Dutch Banking Sector Agreement, 2019b). The report encourages banks to further develop the mechanisms that have been put in place.

For the agreement on garments and textile, available documentation and stakeholder interviews concur that companies are well on track with their due diligence requirements. The latest monitoring figures for 2019 show that 63% of companies complied fully, 19% complied with most requirements and 17.5% were underperforming (Covenant Kleding en Textiel, 2020). Strong performance can also be testified in the disclosure of companies’ production locations (from 2,802 locations in 2017 to 5,812 in 2019 linked to increased insights on their own supply chains by companies) and of materials used in companies’ products. The majority of companies have also published due diligence reports.

In the case of the coal agreement, progress on due diligence by companies is difficult to discern. This agreement lacked monitoring, except for yearly reporting on activities of the agreement parties. Much of companies’ due diligence takes place in the context of the third-party audits of supplier coal mines through Bettercoal (Coal Covenant, 2020). However, Bettercoal has been criticised for falling short of what is expected on due diligence communication by the OECD Guidelines—importantly because it does not offer specific information on risks and impacts identified by supplier audits (PAX, 2014; SOMO & OECD Watch, 2014; ASK! Working Group Switzerland Colombia et al., 2019).³⁹ Similarly, when looking at the energy companies part of the coal agreement, there is little information shared on the risks found in their supply chains, how they mitigate these risks and what results they achieve. Only one energy company has conducted a human rights risk assessment of its Colombian supply chain and reported on progress made. Other companies have not followed this example and instead have argued that Bettercoal audits sufficiently cover human rights (Bettercoal, 2017). Overall, there is a lack of transparency on energy companies’ self-reported due diligence processes of.

There is no evidence that the forestry agreement has had any effects on due diligence in the wood sector in view of its pronounced certification focus. While the Ministry of Foreign Affairs argues that reliance on certification standards is not sufficient to comply with due diligence, as there is little control on the intermediate actors in supply chains, signatory sector associations argue that certification standards address the major RBC risks which are typically at the source of the timber chain. There is, however, a recognition that certification standards are more effective in short supply chains; i.e. timber that is sourced through Dutch importers and subsequently prepared for wholesale in the Netherlands. RBC risks in longer supply chains, where wood-based products are assembled in other countries, are not addressed by certification. However, these supply chains are not addressed as the relevant sector associations are not actively involved in the forestry agreement. It was also argued that these longer chains should be addressed through a sector agreement for the non-food retail sector rather than the current forestry agreement that looks specifically at one product (timber).

³⁸ T1 (type 1) banks are banks active in project finance, whereby the projects financed are located outside the EU and/or provide corporate loans to clients that operate in high risk sectors outside the EU and/or are having extensive value chains outside the EU. T2 banks do not meet these criteria. There are four T1 banks and five T2 banks.

³⁹ According to the 2020 final report of the coal agreement, Bettercoal has meanwhile done a high level gap analysis between the Bettercoal Code and the OECD Guidelines. It is now working on a methodology for a full gap analysis, which will be done by a third party (Coal Agreement, 2020).

Table 19. Progress of companies with implementing due diligence

RBC Agreement	Progress / status
Banking	<ul style="list-style-type: none"> According to the last available monitoring from 2018 (year 2 of agreement), there is a high degree of compliance with the agreement requirements. T1 banks have nearly 100% compliance. For T2 banks, compliance is slightly lower, as some commitments fall outside the scope of the banks' business model. The monitoring report states that banks have progressed well on human rights policy development and human rights due diligence implementation (e.g. engaging with clients on consultation with potentially affected groups; offering a publicly accessible complaints mechanism; and integrating FPIC into client processes).
Coal	<ul style="list-style-type: none"> Companies report having due diligence procedures in place, but there is little transparency on their supply chains and companies do not report on risks identified and addressed (except for one company that started engaging in human rights due diligence for Colombia).
Floriculture	<ul style="list-style-type: none"> Companies consider themselves frontrunners on sustainability and some of them reportedly have due diligence processes in place. However, there are doubts whether these correspond to the OECD Guidelines. Other participating companies do not yet engage in due diligence, but are considered to be aware of due diligence.
Food products	<ul style="list-style-type: none"> The baseline monitoring from 2019 suggests that the majority of large companies (part of the sector associations of CBL and FNLI) have an RBC policy which is embedded into company operations and communicate about their RBC policy. Many of these companies have not yet identified the relevant RBC risks in their supply chain and, as of yet, have no plan in place to address these risks. Medium and small enterprises (part of FNLI and KNSV) sometimes have an RBC policy (50% of cases) but have hardly taken any other steps on due diligence.
Forestry	<ul style="list-style-type: none"> There is no evidence of direct effects on due diligence. The signatories see voluntary certification standards (FSC and PEFC) as the main mechanism to implementing due diligence. The trade associations promote the use of certified timber to their members, but acknowledge that the companies decide on the use of certified timber. Most companies do not feel responsible for due diligence of the supply chain when they purchase their timber from Dutch wholesalers/ agents. First steps are being taken to raise awareness on due diligence compliance.
Garments & textile	<ul style="list-style-type: none"> Companies are well on track on their due diligence requirements. The latest monitoring figures for 2019 show substantial improvement compared to 2018; 63% of companies complied fully, 19% complied with most requirements and 17.5% were underperforming. Companies that joined the agreement later made quicker steps towards progress (acceleration effect). Progress has also been made on supply chain transparency: In 2017, participating companies disclosed 2,802 production locations; this increased to 4,268 in 2018 and 5,812 in 2019; 16 companies also publish their production locations on their own website. A risk prioritisation exercise from 2019 resulted in the following priority risks identified by companies: resource use, water/energy/chemicals, living wage, freedom of association and child labour. In 2016, 39 out of 40 companies that joined publicly communicated about their due diligence in 2019, which is one of the requirements for the third year of participation.
Gold	<ul style="list-style-type: none"> Significant variation between companies can be discerned. The monitoring data from 2018/19 shows that 85% of companies have a public RBC policy or statement (nearly double the number compared to 2017/18) and 38% of companies publicly report on their due diligence efforts (no change compared to 2017/18). There is a general recognition that industry companies are further advanced in having functional due diligence systems in place compared to smaller companies (e.g. jewellers) that often struggle with due diligence. For FGZ and NGG members, a simplified due diligence framework has therefore been put in place, which has been signed by 70 FGZ members (out of 900) and 30 NGG members (out of around 100).
Insurance	<ul style="list-style-type: none"> The baseline monitoring (2019) suggests that large insurers tend to be further advanced on due diligence than small insurers. The picture for medium-sized insurers is varied. Challenges were noted on integrating EGS due diligence into investment policy, understanding and identifying high-risk sectors and themes, taking action on outcomes of impact assessments and transparency about due diligence outcomes.

Metals	<ul style="list-style-type: none"> • There is increased knowledge on the OECD Guidelines and an increase in awareness on the responsibility of metal companies, particularly through knowledge sessions, field trips and stakeholder presentations. However, there is no data available yet on progress on due diligence.
Pension funds	<ul style="list-style-type: none"> • According to the baseline monitoring from 2019, most participating pension funds have a socially responsible investment policy and apply it. Many investors focus on reducing any negative impact on the financial value of their investments. However, the OECD Guidelines require that pension funds also reduce and, if possible, restore the potentially negative impacts of investments on stakeholders. • Moreover, the monitoring data indicates that there is confusion among pension funds about fundamental concepts such as due diligence and long-term value creation.
TruStone	<ul style="list-style-type: none"> • Due diligence processes of companies are not yet in place. Companies are waiting for practical tools, guidance and support from the secretariat.

5.6 To what extent is progress a result of the RBC agreements?

Only three agreements—food products, insurance and pension funds—have conducted baseline assessments to capture companies’ due diligence performance shortly after the start of the agreements. This makes it difficult to draw solid conclusions on the effectiveness of RBC agreements. Thus, the following observations are largely based on a large number of interviews with participants in all RBC agreements to gauge companies’ due diligence activities prior to the different agreements. Overall, interviewees across the board concur that awareness of due diligence was low prior to the agreements, especially with regard to understanding that RBC is about identifying and addressing risks to people instead of risks to companies (Table 20). Most RBC agreements therefore started with few companies having experience in conducting due diligence.

At the same time, in each agreement, there are a number of frontrunners that had already engaged in due diligence prior to the agreement. In most cases, these are large international companies that were stimulated to launch due diligence processes due to public pressure in their sectors (e.g. Behind the Barcodes campaign by Oxfam; Fair Finance Guide) and existing sustainability initiatives (e.g. Dow Jones Sustainability Index; Roundtable on Sustainable Palm Oil). Yet, interviews suggest that most of the prior due diligence practices were incomplete or not in line with the OECD Guidelines and the UNGPs. In the garments and textile sector, making sustainability choices based on materiality and not based on severity of risk prevailed. The floriculture agreement also illustrates that companies can be faced with multiple sustainability demands, such that even frontrunner companies, with several years of experience in sustainability initiatives, may not yet have paid much attention to due diligence. Instead, flower buying companies largely focused on working with certification standards as a way to address adverse impacts in their supply chain (CBI, 2017).

Thus, for frontrunner companies with varying levels of exposure to and experience in due diligence, the added value of the agreements lies in improved (more structured) due diligence processes that are in line with international guidelines, which was confirmed for the agreements on banking and garments and textile. While some larger companies noted that they would have advanced on due diligence even without an RBC agreement, the yearly reporting requirements seem to have incentivised progressive advancement. Moreover, these companies can benefit from an increased level playing field in the Netherlands (Rutten & Oudendijk, 2019).

The majority of companies in RBC agreements, however, had little or no experience in due diligence prior to the agreements. This holds particularly for SMEs. A special case is the coal agreement, where companies reported having had due diligence in place prior to agreement (E.ON et al., 2013). Stakeholder interviews and available documentation suggest that the coal agreement has had limited influence on and did not significantly change the due diligence practices by participating companies. In fact, NGOs continuously criticised companies’ due diligence practices as weak. Only one participating energy company started a

human rights due diligence process on coal sourced from Colombia during the time of the agreement. There is no evidence that this is because of the agreement. Instead, pressure by NGOs outside of the agreement is likely to be the main driver, according to interviews with NGOs. This reiterates the finding of IOB, stating that this “[raises] questions about the additionality of the [coal] agreement in this respect [of due diligence]” (IOB, 2019, p. 63).

Table 20. Due diligence practices prior to RBC agreements

RBC Agreement	Due diligence practices prior to RBC agreements
Banking	While most participating banks had a public policy statement on respecting human rights prior to the agreement, there was very little focus on implementing human rights due diligence. Banks were used to practising EGS due diligence, which takes a different approach. Therefore, the agreement is considered to have contributed considerably to progress made, while recognising that other international initiatives have also had an influence.
Coal	Companies indicated having had due diligence systems in place prior to the coal agreement. These systems are not organised by management in the Netherlands, but by headquarters abroad. However, NGOs dispute the claim of companies having adequately engaged in due diligence, both prior to the coal agreement and afterwards.
Floriculture	There is a general focus in the flower sector on sustainability certification and standards, but not on risks to people arising from company operations. Only a few companies are considered to currently conduct due diligence according to the OECD Guidelines and UNGPs.
Food products	According to the baseline monitoring from 2019, the majority of large companies (part of the sector associations of CBL and FNLI) have an RBC policy which is embedded into company operations, offer a complaints mechanism and communicate about their RBC policy. Many of these companies have not yet identified the relevant RBC risks in their supply chain and, as of yet, have no plan in place to address these risks. Medium and small enterprises (part of FNLI and KNSV) sometimes have an RBC policy (50% of the cases) but have hardly taken any other steps on due diligence.
Forestry	Companies were not familiar with the OECD Guidelines and the concept of due diligence.
Garments & textile	Except for frontrunner companies, the majority of companies did not have due diligence processes in place prior to joining the agreement. Most companies either started with due diligence after joining the agreement or improved their due diligence processes.
Gold	Among jewellers and goldsmiths, due diligence practices were weak or non-existent prior to the agreement. This is different for industry partners who suggested having engaged in due diligence prior to the agreement, also because of legal requirements in different business contexts. They reported no change in their due diligence practices as a result of the gold agreement.
Insurance	Baseline monitoring data suggests that large insurers tend to be further advanced on due diligence than small insurers. The picture for medium-sized insurers is varied. Challenges for large insurers include transparency and implementation of sector and theme-specific policies.
Metals	The level of awareness and knowledge regarding RBC was very low prior to the negotiations. With exception of a few frontrunners, companies were not familiar with the OECD Guidelines and/or did not realise that these were applicable to their own company.
Pension funds	According to the baseline monitoring from 2019, most participating pension funds have a socially responsible investment policy and apply it. Many investors focus on reducing any negative impact on the financial value of their investments. However, risk mitigation and restoration of negative impacts do yet not seem to take place. Moreover, there are doubts on the alignment of due diligence processes with the OECD Guidelines.
TruStone	Most signatory companies did not engage in due diligence or RBC prior to the agreement.

5.7 Observations on progress on due diligence

A number of observations can be made from the analysis above. Firstly, even in advanced RBC agreements, there is more progress on policy development and risk identification, but less progress on addressing risks, monitoring and reporting about this. This is a logical outcome of the staggered approach

of company commitments. At the same time, many interviewees bemoaned the 'slow' progress. Evidence suggests that this is grounded in the following factors:

- Companies are often less advanced on RBC than expected, which implies that creating a common understanding on due diligence and company requirements takes time (see also Rutten & Oudendijk, 2019).
- RBC demands internal capacity, which may not be in line with the capacity available. This was noted as a particular challenge for SMEs.
- Risk identification requires access to relevant information that is (locally) verified and reliable. However, companies frequently lack relevant local connections for verification of information (e.g. noted in the agreements on garments and textile, TruStone, floriculture, gold and food products) and/or are hesitant about the quality of NGOs information (e.g. observed in the insurance and pension funds sectors).
- In the agreement on garments and textile, stakeholder interviews suggest that companies find it difficult to address risks due to the spatial and cognitive distance to production locations and the lack of context-specific insights—especially if they are not part of a collective project that brings them in contact with local realities. Companies also seem hesitant on how to move to concrete actions, in view of the scale and complexity of identified risks (e.g. living wage does not only concern their supply chain but the whole sector) and limited company resources.

Second, most RBC agreements indicate that smaller companies are lagging behind in due diligence and RBC, which has been particularly noted for the insurance sector, food products, banking, gold and pension funds. The evidence was less conclusive for the agreement on garments and textile. While the 2019 mid-term evaluation suggested that smaller companies, in particular, consider it difficult engaging with due diligence (Rutten & Oudendijk, 2019), evaluation interviews indicate that the level of difficulty largely depends on the complexity of supply chains.

Third, in a number of RBC agreements (e.g. garments and textile, banking and food products), participating NGOs and unions have raised questions on company performance on due diligence. This is because they do not have oversight of individual company performance due to confidentiality protocols, but meanwhile observe continued grievances in their respective sectors, whether or not linked to specific companies. It is therefore important that the RBC agreements offer an opportunity to also discuss (alleged) misconduct and remind companies of their due diligence commitments (see the example of the food products sector in Box 8).

Box 8. The potential added value of RBC agreements as reminders of company responsibilities

In November 2019 and April 2020, The Dutch TV programme 'Keuringsdienst van Waarde' broadcasted a series of investigation into labour rights violations in the Southern European vegetable and fruit sector, which revealed that workers are paid below the minimum wage and live in poor conditions. The initial response of the food products sector to the TV programme was one of denial—rejecting the claim that Dutch actors were connected to worker exploitation and calling upon the Italian Government to intervene if laws were violated and emphasising that Dutch actors were in critical dialogue with their suppliers. This suggested a limited willingness to communicate openly and transparently about misconduct in the value chain according to the OECD Guidelines.

However, as the TV programme also criticised the RBC agreement on food products, the agreement's steering committee discussed the matter. As a first action, the steering committee decided to clarify that confidential information can be shared within the limits of privacy and competition-sensitive information. Furthermore, based on FNV's initiative, the parties have discussed the options of a collective project to address the signalled misconduct in the Italian and Spanish vegetable and fruit sectors. FNV is currently preparing a project proposal. While details, including funding, are not yet known, these developments show that the RBC agreement can function as a space for discussing—and possibly implementing—the due diligence responsibilities of the food sector.

External—usually NGO-driven—assessments on performance of companies in different RBC agreements also question progress on due diligence. They specifically caution that company performance is less positive than what is reported by the agreements. This holds for the agreements on garments and textile, banking, insurance, food products, pension funds and coal. For example:⁴⁰

- With regard to food products, Oxfam’s Behind the Barcode Campaign—which rates the due diligence systems of the five biggest supermarkets in the Netherlands—testifies to progress made by retailers between 2018 and 2020. Their ratings, however, are considerably lower than the self-reported scores of supermarkets in the baseline assessment of the food products agreement (Oxfam Novib, 2019a; Oxfam Novib 2020).⁴¹
- In the financial sector, the FFG reports lower ratings for companies in the banking, insurance and pension fund sectors than the reported performance through the RBC agreements. Particularly, in the banking agreement, this has led to considerable tension between banks and CSOs, some of which are part of the FFG. Several banks criticised the methodology used for not aligning with the UNGPs—a claim refuted by the FFG (Herder et al., 2018)—and stopped their collaboration with the FFG in 2018 (NVB, 2018).⁴² Irrespective of the critical perspective of the FFG, Dutch (T1) banks have been positively assessed in international comparison: according to BankTrack’s global assessment, Dutch banks are ranked as leader (ABN Amro) and frontrunners (Rabobank & ING) (BankTrack, 2019).
- Concerning the agreement on garments and textile, a study by SKC and SOMO (2020) has assessed the due diligence reports of 34 signatory companies against the OECD sector-specific guidelines. The study confirms that almost all companies have an RBC policy on their website, are transparent about the countries where they source from (not necessarily up to individual factory level) and have engaged in risk assessment. At the same time, only half of the companies report on actual risks at the factory level (instead of potential risks at country level) and most companies do not report on concrete plans to address risks found. Risk identification also relies heavily on audit reports of factories and may therefore neglect critical risks that are typically not mentioned in audit reports, such as freedom of association (SKC & SOMO, 2020). This study thus also shows the importance of engaging with companies’ due diligence reporting as a way for companies to receive (critical) feedback.

External studies and interviews conducted suggest that there is limited attention to meaningful stakeholder engagement in companies’ due diligence in line with the OECD Guidelines (SKC & SOMO, 2020; OECD, 2020). If at all, stakeholders engaged are those that are part of the respective agreement, but even here interviews suggest that engagement is often not linked to companies’ concrete issues (see also Rutten & Oudendijk, 2019). This was recognised as a weakness by the agreement on garments and textile, which therefore conducted explicit match-making between companies and NGOs/unions. In addition, 20 companies were brought into contact with local stakeholders in the last year (Covenant Kleding en

⁴⁰ In 2019, Solidaridad also published a statement on the gold agreement (in which they are a member) and commented on the quality of companies’ due diligence reports. Solidaridad notes that, “it is nice that reports are now being published, but they can often be improved. For example, most reports provide only limited information about the supply chain and what risks have been identified” (Solidaridad, 2019a). However, it is not clear what assessment this statement is based on.

⁴¹ Note that all external assessments use a different methodology than the assessment frameworks of the RBC agreements. For instance, the Behind the Barcode assessment of Oxfam Novib assesses what companies’ policies/practices mean for transparency, workers, small-scale farmers and women in their supply chains based on more than 90 indicators and sub-indicators (Oxfam International, 2018).

⁴² For banks, it was difficult to separate the FFG discussions from the collaboration under the banking agreement. To deal with this situation, some banks had appointed different people internally for the FFG and the banking agreement (before ceasing collaborating with the FFG in 2018).

Textiel, 2020). Nonetheless, engagement with (potentially) affected stakeholders does not come out strongly out of companies' public communication (SKC & SOMO, 2020).

In the coal agreement, NGOs and unions were not included in the agreement, but were merely consulted on an annual basis. This has led to frustration among consulted organisations, as they felt that little of their feedback was taken on board in a meaningful way, according to NGOs interviewed. NGOs criticised that companies have even less interaction with outside stakeholders, especially mining communities and human rights leaders (PAX, 2019; PAX, 2020).

In the financial sector agreements, client-only engagement plays a dominant role compared to stakeholder engagement. There are doubts whether client processes involve meaningful consultation with potentially affected groups and other relevant stakeholders (Thompson, 2018).

5.8 Key factors influencing companies' compliance with due diligence

The ToR ask for elements contributing to thorough due diligence by companies connected to the RBC agreements, which raises the question of what 'thorough' is in this context. This is not specifically addressed in the OECD Guidelines (OECD, 2011) or OECD Due Diligence Guidance (OECD, 2018), except for stating that due diligence should be proportionate to the severity and likelihood of adverse impact. In fact, the concept of due diligence already combines the notion of 'due'—meaning that companies' processes and actions should be commensurate with the RBC risks to be addressed—and 'diligence'—acting with prudence and perseverance to address RBC risks in light of the circumstances (Amnesty International & OECD Watch, 2018).

As has been noted earlier, the reporting by RBC agreements gives little insights on the types of due diligence actions that were taken by companies, whether these actions were assessed as appropriate to the nature of the specific impact, and whether they were commensurate with the severity and likelihood of the adverse impact. To investigate this, a different evaluation approach would be necessary and a comparative investigation into the quality of the due diligence processes and reporting of individual companies would be recommended.

As this evaluation cannot comment on the thoroughness of companies' due diligence, we will limit ourselves to assessing the factors that enable or hinder companies' compliance with due diligence requirements of the RBC agreements. It should be noted that the absence of a facilitator can be understood as a barrier and vice versa. Not all factors are present for each agreement and some agreements also experience more barriers than others.

Based on Hofman et al. (2018) and Busse et al. (2016), we here distinguish between three categories of factors, which together capture the motivation of companies to comply with due diligence requirements: (1) stimuli perception (i.e. companies' perception of certain stimuli to invest in and implement due diligence); (2) resources and costs (i.e. direct costs and resources required for due diligence implementation); and (3) complexity of due diligence requirements (i.e. the concrete understanding of how to put due diligence in practice). Some of these factors can be influenced by RBC agreements, including measures to reduce the complexity of due diligence requirements. Other factors are often beyond the sphere of influence of RBC agreements, particularly factors pertaining to the set of stimuli that individual companies experience and which determine their investment choices with regards to due diligence. One assumption that did not come out of the interviews was the role of economic benefits resulting from due diligence: private sector respondents did not (yet) perceive due diligence to be

connected to improved financial performance. As such, this underlying assumption of RBC policy (IOB, 2019) still needs to be tested.⁴³

Table 21. Enablers and barriers to companies' due diligence compliance

Category	Supporting factors	Barriers
Stimuli perception	1. Clear reporting requirements & independent monitoring procedures	1. Few incentives in view of business model
	2. Compliance with (potential) legislation	2. Limited or no consumer demand for due diligence
	3. Internal stakeholder pressure (inclusion of campaigning NGOs and unions)	3. Due diligence requirements not equally relevant to all companies
	4. External stakeholder pressure (high public pressure and visibility of the sector/company)	
	5. Top management support for due diligence	
Resources & costs	6. Prior experience with sustainability	4. Capacity constraints
Complexity of due diligence	7. Support tools for operationalisation	5. Operationalisation barrier at company level
	8. Collective risk assessment & knowledge sharing	6. Data/information verification and reliability for risk assessment
		7. Limited information exchange among companies and with NGOs

5.8.1 Factors contributing to due diligence by companies

The main facilitating factors for due diligence compliance derive from the category of stimuli perception, i.e. the extent to which incentives for company action are present in RBC agreements and also recognised by companies. Furthermore, reducing the complexity of due diligence for individual companies has been shown to act as an enabler to company compliance:

1. Yearly and detailed reporting requirements in RBC agreements contribute to due diligence compliance. While companies interviewed often considered the reporting requirements as an administrative burden, in light of the fact that a majority of companies did not or only inadequately engage in due diligence prior to the RBC agreements, reporting requirements incentivise company action. For the agreement on garments and textile, the OECD recently praised and confirmed the relevance of the approach taken (OECD, 2020), which is considered to have contributed to companies engaging in due diligence processes (Rutten & Oudendijk, 2019). Reporting requirements go hand-in-hand with credible and independent monitoring procedures. A risk of subjectivity in monitoring (e.g. lacking consistency across assessors) can lead to frustrations by companies (Rutten & Oudendijk, 2019; OECD, 2020).
2. Several businesses also identified that the reporting requirements would prepare them for potential (national or EU) legislation on due diligence and would thus facilitate future legislative compliance.

⁴³ Contrary to the long-standing debate on financial performance and corporate social responsibility (e.g. Aguinis & Glavas, 2012; Rost & Ehrmann, 2017; Awaysheh et al., 2020), there is very little scientific literature on the 'business case for (human rights) due diligence'. Several international handbooks and guidelines suggest that managing human rights risks would eventually lead to improved business performance. However, there is no empirical evidence thereof. While financial risks may be associated with unethical conduct and human rights abuses, more often, human rights abuses (and adverse labour and environmental impacts) are hidden risks. Therefore, Fasterling (2017) concludes that "to date, the evidence that negative human rights impacts regularly affect firm value negatively is, in fact, quite thin, and where there is some evidence, it is at most indirect" (p. 233).

For example, in the metals and gold agreements, companies interviewed suggested that the key motivation to commence due diligence processes is to stay ahead of legislation, particularly the EU Conflict Minerals Regulation.

3. Different RBC agreements reported that having NGOs that partner inside the agreements and simultaneously campaign outside the agreements can be challenging for participating companies. However, their inclusion, together with unions, has often contributed to higher due diligence requirements than companies were initially willing to agree to—see the example of TruStone where a report by Arisa ('The Dark Side of Granite') stalled the negotiations for half a year, but ultimately led to higher and clearer due diligence requirements for companies. NGOs' inclusion also ensures that companies do not misuse RBC agreements (Thompson, 2018). For example, this can be seen in the financial sector agreements, where participating NGOs also assess adhering companies in the context of their role in the FFG, thus keeping the pressure on companies.
4. Pressure on companies also critically derives from the external environment (NGOs, media and political pressure). Exposure to (repeated) public outcry has been noted as a key incentive for sectors to start negotiations on an RBC agreement, particularly for garments and textile, food products, floriculture and coal and, to a lesser extent, also natural stones and gold (see Chapter 2). Interviewees from the agreement on garments and textile noted that continued public pressure on companies, although experienced as frustrating by the companies themselves, is critical to maintaining commitment to due diligence compliance.
5. Top management commitment is critical for the allocation of company-internal resources (such as staff time) and company internal procedures (e.g. influence of RBC officers on procurement decisions). Concrete evidence that this is influenced by RBC agreements was only found for garments and textile. Here interviews and external studies (Rutten & Oudendijk, 2019; OECD, 2020) confirm that the annual assessment conversations with companies build and reinforce buy-in from senior level management. Other RBC agreements do not feature such extensive assessment interactions at company level.
6. Prior experience on sustainability and RBC was identified as an important facilitating factor in several RBC agreements, as it reduces initial investments that companies need to make. Companies that have a frontrunner role on sustainability were therefore found to be among the first companies to comply with due diligence requirements.
7. Support tools and activities provided by the RBC agreements facilitate compliance with due diligence. However, the experiences of the garments and textile agreement—which has established the most extensive support infrastructure for companies—suggest that there is a saturation point and quantity of support tools is not a relevant factor. There was a clear indication that companies gain most support from tools and activities that are practical (i.e. can be easily applied to a company's specific situation); clear in their purpose and relevance; and complemented by face-to-face interactions (e.g. the annual assessment conversations in the garments and textile agreement) (see also Rutten & Oudendijk, 2019).
8. Collective risk assessment exercises were much appreciated by companies interviewed. They indicated that knowledge sharing contributed to increased insights on specific sectors and risks associated with them and facilitated (or were expected to facilitate) companies' individual risk assessments and, importantly, risk prioritisation. This type of collective assessment can thus be considered an important 'jump-starter' for companies' due diligence compliance.

5.8.2 Factors hindering due diligence by companies

The main barriers to due diligence relate to negative stimuli perceived (e.g. competitive pressures), capacity constraints (notably by smaller companies), as well as obstacles that companies experience in operationalising due diligence:

1. Several sectors and companies are characterised by business models, e.g. based on cost leadership and narrow profit margins, which offer few incentives to invest in extensive due diligence. This is even

more pronounced in the absence of an international playing field and, even in the Netherlands, competitor companies that have not joined an RBC agreement seemingly remain below the radar. For example, in the food sector, interviewed private sector stakeholders stated that a large portion of SMEs produce private label products based on low prices, small margins and high volumes. From a business point of view, it makes less sense for these companies to invest heavily in due diligence systems. In the textile sector, several interviewees from companies, NGOs and Dutch Government noted the competitive constraints leading to fragile financial performance of many companies. For the metals sector, an interviewee raised the concern that RBC investments are among the first costs to be cut in the case of a crisis—the Covid-19 outbreak being a striking example with yet unknown effects on due diligence efforts.

2. Several sectors are also faced with limited or even no consumer demand for due diligence, which acts as a disincentive for companies to invest in due diligence. For example, interviewees noted that there is limited public pressure on the metals sector and reputational risks of misconduct are low. Partially, this is caused by the predominance of business-to-business relations resulting in low motivation to invest in reputation management via due diligence. Investments in due diligence were also reported to be constrained by limited consumer demand in the natural stones and gold sector. In both RBC agreements, companies have pushed for a recognisable label to signal RBC to consumers, but without success.
3. Even for companies perceiving stimuli to invest in due diligence, e.g. as reputation management, due diligence requirements are not equally relevant and impactful. For example, in the banking agreement, corporate lending and project finance are highly relevant to large T1 banks, whereas adhering smaller T2 banks have much less in terms of corporate lending or project finance activities. Thus, human rights requirements on lending and project finance have much greater connotations for some banks both in impact and relevance (Thompson, 2018). Also in the food products agreement, the diversity of companies—from micro-enterprises to companies with thousands of employees—leads to a diversity of due diligence requirements. This makes it challenging for companies to have an adequate understanding of their due diligence responsibility, as well as for companies with fewer responsibilities, to stay engaged and consider compliance important.
4. Company capacity is recognised as a key constraint, which is particularly experienced by smaller companies and, as a result, are lagging behind medium and larger companies. In the food products agreement, this has led to an interesting dynamic: whereas the FNLI and KNSV sector associations are primarily concerned with due diligence compliance by their members, the third CBL sector association reports high due diligence capacity of their members and therefore focuses on collective projects.
5. Companies' awareness and knowledge of due diligence is often low at the start of an RBC agreement. For instance, both the gold and TruStone agreements reported that there was an 'awareness barrier' that needed to be overcome, as most companies were neither aware of due diligence nor recognised the need and urgency of due diligence for their own operations. RBC agreements report that, over time, the awareness barrier is less about due diligence in general, but a concrete understanding of how a company can operationalise due diligence in its specific situation and context.
6. Companies are often confronted with limited access to reliable and verifiable information on risks and adverse impacts on their supply chains, which was noted by companies and NGOs interviewed across all RBC agreements. For example, in the banking agreement, multiple interviewees explained that the main challenge is that the bank's due diligence is a derivative of the client's due diligence. The bank collects information from the client itself, publicly available information or ESG data providers. It may happen that different sources provide different realities. For example, an NGO report may mention issues, but the client denies and argues that the NGO report is incorrect. Banks interviewed thus posed the question of how they, from their Netherlands' office, should judge the quality of different information sources.
7. While the collective risk assessment activities were appreciated by companies as helpful for their due diligence, there seems to be little information sharing between companies and NGOs/unions on the

concrete risks that emerge out of individual risk assessments to help companies address these risks. In the case of the banking agreement, competition law and client confidentiality imposed actual and perceived limitations on the collaboration between banks and other parties, which was experienced as limiting to banks' ability to move due diligence practices forward (Dutch Banking Sector Agreement, 2019b).

Chapter 6



6 Effects in the supply chain

6.1 Key findings

- ❖ Leverage of Dutch companies in global value chains is often diffused and varies per RBC agreement. Some global chains clearly show a higher degree of leverage of international (including Dutch) buying companies than others (e.g. floriculture, garments and textile, food products, forestry). In other chains Dutch companies need to be substantial in size to have a high degree of leverage, as critical choke points are located elsewhere in the chain. In such chains, however, Dutch financial institutions may hold leverage as financiers and investors.
- ❖ The varying degrees of leverage emphasise the importance of broader categories of leverage which are reflected in the collaborative approach of RBC agreements.
- ❖ The impact of RBC agreements is difficult to trace. For example, with regard to sector-specific themes, RBC agreements contain few concrete commitments on sector-specific themes against which progress can be measured. For most agreements, reporting on concrete results achieved, as opposed to activities conducted, is also weak.
- ❖ RBC agreements generally follow four key impact pathways. The main one concentrates on achieving impact through company compliance with due diligence. Yet, substantial progress on due diligence is only reported for the agreements on banking and garments and textile, but not, or considerably less, for other agreements. Also for garments and textile and banking, progress does not yet translate into impact in view of the challenge of—and time needed for—translating company procedures into concrete actions with measurable results.
- ❖ Related to second impact pathway, several RBC agreements have started collective projects in production locations as prototypes for positive impact stories. These projects are generally viewed positively as valuable learning opportunities and to showcase motivation and commitment. Concrete (and independent) impact evidence is so far lacking—also because there is limited reporting on these projects and some projects have only recently started their activities.
- ❖ A third impact pathway involves a focus on standards and certification as mechanisms of addressing RBC risks in production locations. This pathway is particularly relevant for the forestry and coal agreements. In the case of forestry, progress has been made on the uptake of certified timber. However, barriers are encountered relating to supply shortages and a lack of demand by customers. With regard to coal, positive developments include the increased number of Bettercoal-audited suppliers and greater uptake of audited coal. However, it is impossible to distinguish the effects of the coal agreement from Bettercoal itself.
- ❖ Finally, some agreements aim to create impact through outreach and alignment, especially with similar initiatives. While some promising traction could be observed by the agreement on garments and textile, activities are mostly at the output level and impact was not yet observable.
- ❖ Observations made in this evaluation suggest that there are limitations in the extent to which RBC agreements are able to reduce RBC risks and achieve positive impacts. Limitations specifically relate to collective action problems (overcoming disincentives grounded in competition in an uneven international playing field) and motivating the right actors to join forces with sufficient leverage in global supply chains. Scaling and alignment with demand-side initiatives and supply-side actors is therefore critical.

- ❖ Tracing the impact of RBC agreements on the ground therefore warrants close attention in the future.

6.2 Share and leverage of Dutch companies in global value chains

The OECD Guidelines expect companies to identify potential and actual risks in their supply chains and to take the necessary steps to cease or prevent adverse impact. The Guidelines furthermore state that where a company has not contributed to an adverse impact, but is linked to such impact, the company should use its leverage over business relationships to mitigate any remaining [adverse] impacts. “Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm” (OECD, 2011, p. 24). The RBC agreements also follow this notion: where companies have high leverage, they are expected to find entry points to prevent and address risks (SER, 2014). In case of more complex situations, RBC agreements can offer an opportunity for companies to collaborate to increase their leverage to address risks (SER, 2014).

This chapter (6.2) therefore assesses the importance of the Netherlands as an importer in each of the 11 sectors with an RBC agreement based on trade data (6.2.1) and the expected leverage of Dutch companies in these sectors based on a review of (scientific) literature, complemented with information obtained through interviews (6.2.2).

6.2.1 The Netherlands in world trade

The share of Dutch companies in global value chains is estimated using world trade data obtained from the World Bank and the International Trade Centre (ITC). The key results are summarised in Figure 6 below.

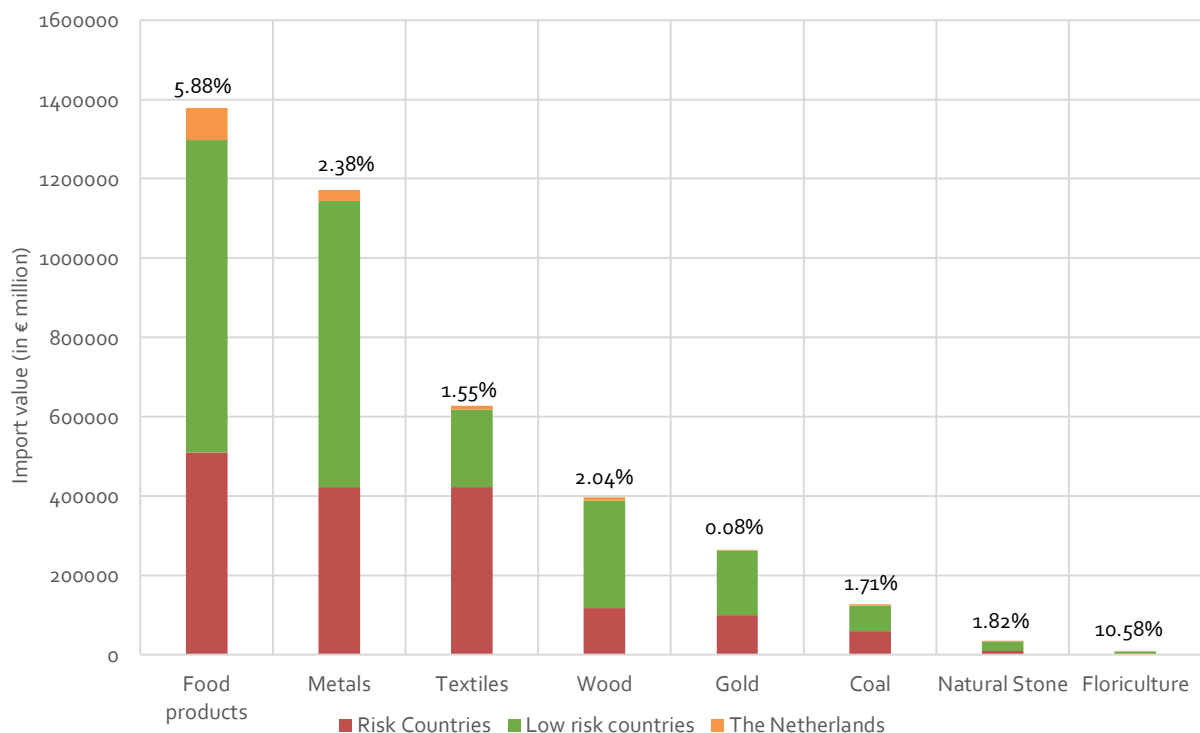


Figure 6. Imports by the Netherlands in comparison to global trade volumes, by sector

Source: ITC Trade Map (2019) & WITS (2019)

Figure 6 shows the total world trade values in 2018 for each non-financial sector for which an RBC agreement was signed.⁴⁴ It also shows the share of this trade imported by the Netherlands (in orange), the share imported by the countries that are classified as 'high risk' in terms of RBC (in red), and the share imported by countries classified as 'low risk' (in green).⁴⁵ This leads to the following observations. First, there are large differences between sectors in terms of size. The food products and metals sectors are the biggest in terms of trade volumes. In comparison, the world trade in floriculture and natural stones is considerably smaller.

Second, the Netherlands is, in general, a small but significant player in most of the sectors for which there is a sector agreement. It is particularly remarkable that a relatively large share of world trade in food products (5.9%) passes through the Netherlands. The relative importance of the Netherlands, however, does vary considerably by sector. While the Netherlands is a relatively important player in food products, and particularly for floriculture (10.6%), it plays a minor role in the global gold sector (0.08%).

Finally, a large share of world trade is destined for countries that are considered 'high risk' in terms of governance. It can be assumed that companies in high risk countries are relatively more price sensitive and less concerned with RBC, which would imply that there are many alternative buyers for suppliers that do not comply with international RBC guidelines. The suppliers' ability to switch to buyers with less stringent requirements can be expected to have a negative influence on the leverage of Dutch companies (see discussion below).

For the financial sector a more useful way to assess the size of Dutch companies in global comparison is to look at the outstanding assets.

Figure 7 shows the size of the assets of the Dutch banking, pension funds, and insurance sectors as a share of the estimated global size of these sectors. Again, it shows that the Dutch financial sector is small but significant.

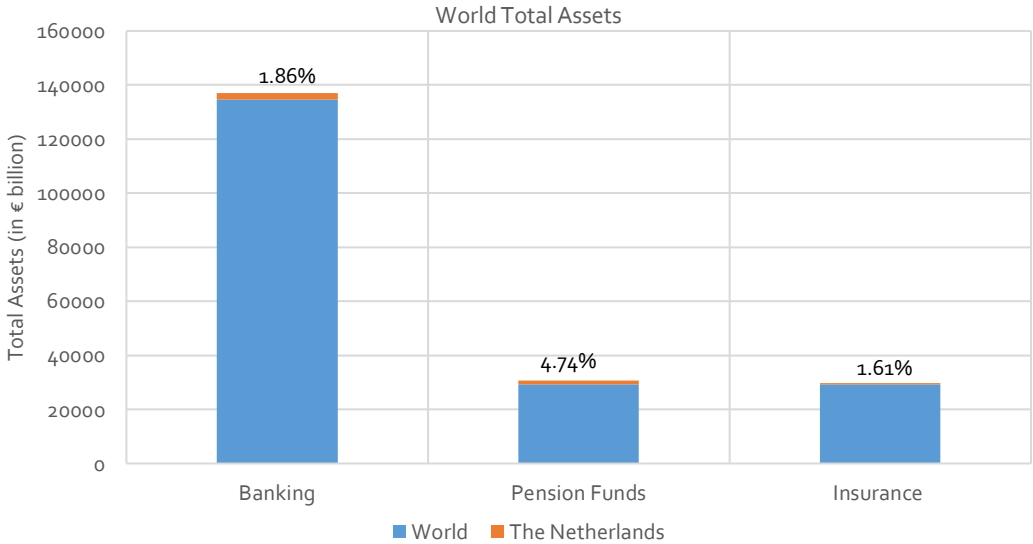


Figure 7. Size of outstanding assets by banks, pension funds, and insurance companies in the Netherlands and globally

Source: DNB (2018) & Statista.com

⁴⁴ The banking, pension funds and insurance sectors are not included in Figure 7, because the importance of Dutch companies in these sectors is not captured by trade flows.

⁴⁵ Based on Amfori BSCI (2020) Countries' Risk Classification.

6.2.2 Leverage of Dutch companies in global value chains

The analysis of the 11 global value chains connected to RBC agreements shows that leverage is often much more diffused than traditional categories of buyer- and producer-driven typologies, especially as many chains are complex and opaque, and span multiple production, processing and manufacturing locations before materials or products reach the Netherlands. The metals value chain is the best, but not the only, example of such complexity. Many Dutch (or Dutch-based) companies therefore typically have little oversight on their own supply chains prior to engaging in due diligence.

Some global chains clearly show a higher degree of leverage of international buying companies than others, such as floriculture, garments and textile, food products and, to a lesser extent, forestry. Dutch companies engaged in these chains can therefore be expected to have at least a certain degree of leverage over their (next) supplier, depending also on variables such as company size versus supplier size, purchase order, complexity of transactions, duration of relationship and competitive pressures on suppliers. In other chains (e.g. metals, gold and coal), Dutch companies (or those active on the Dutch market) need to be substantial in size in order to have leverage, as the critical choke points can be in the middle parts of the chain (e.g. smelters, refiners) or production locations (e.g. mines) where Dutch companies are not involved. Particularly in these chains, however, Dutch financial institutions may hold leverage, e.g. as financiers of large-scale mining operators.

Thus, purchasing power itself does not explain leverage of Dutch companies in supply chains. Instead a variety of factors is at play, including capability of the supply base, technological intensity (and difficult-to-replicate competencies), a firm's position in the network (like centrality), investment capacities and relational assets (Gereffi et al., 2005; Sturgeon, 2009). Leverage can also take different forms, such as control (coercive power), agenda-setting power and standardisation (i.e. making others behave in certain 'normalised' ways) (Dallas et al., 2019). This underscores the importance of not solely focusing on purchasing power and commercial leverage in global value chains (e.g. enforcing the use of contractual clauses with the next tier supplier). Rather, for many Dutch companies, a broader application of leverage may be more fitting (see Shift et al., 2016), some of which directly connect to the idea of RBC agreements (SER, 2014): creating leverage through broader business activities (e.g. capacity building of suppliers), through cooperation with other companies and through multi-stakeholder collaboration. At the same time, there are companies with sufficient purchasing power that can use incentives or sanctions to directly compel less powerful suppliers to behave in certain ways. For them, the expectation of finding individual entry points to exercise leverage, where required to address adverse impacts, still holds.

The following analysis elaborates on the leverage of Dutch companies in the global value chains connected to the 11 RBC agreements.

Coal

The Netherlands accounts for around 1.7% of global coal imports. Not all of this can be used for electricity generation and much of the imported coal is in transit to Germany. Energy companies on the Dutch market therefore stated that they have limited impact on mining companies (E.ON et al., 2013) and face an oligopolistic supplier market (Coal Covenant, 2017, p. 34). NGOs and other observers have disputed that this holds for every production country. In view of heavy sourcing of Colombian coal when the coal agreement was signed in 2014, energy companies were considered to have 'crucial leverage power' in Colombia (SOMO, 2012; Hupperts et al., 2014). As coal imports from Colombia have declined, however, this leverage has decreased. Yet, all four companies of the Coal agreement are part of multinational enterprises, with headquarters in other European countries, which gives them 'average leverage' in the coal supply chain (IOB, 2019).

Power structures in the global coal supply chain are complex and subject to shifting global demand patterns and massive price fluctuations (e.g. Parker et al., 2018). While there are four main categories of

corporate players in the global coal supply chain—producers (mining companies), logistics companies, traders and utility (i.e. energy) companies—the companies positioned at either end of the chain are considered to be most asset-intensive and profitable (SOMO, 2012). Recent mergers among utility companies and among mining companies have led to an enormous concentration of capital (Parker et al., 2018). The consolidation at the mining exploitation stage, coupled with a decade's long growth in global coal demand, is key to explaining why producers are considered having more market power than coal buyers (Schernikau, 2016). However, producers' position is weakened by global competition between resource-endowed regions (Parker et al., 2018), overcapacity and overproduction of mines (Schernikau, 2016) and the easy substitutability of thermal coals (Sowers et al., 2017).⁴⁶ Moreover, market power is not stable and is significantly influenced by market prices. These, in turn, are to a large extent influenced by China—the largest coal producer and coal importer (Cornot-Gandolphe, 2019). Europe, by contrast, is not an important power on the international market, with a predicted further decline as 16 EU countries, including the Netherlands, have adopted plans to phase out coal (Cornot-Gandolphe, 2019).

Floriculture

The Netherlands is the dominant global supplier of flowers and flower products, with a 43% share in world flower exports (Rabobank, 2016). The Netherlands is also the largest importer of floriculture products worldwide, accounting for more than 10.5% of global imports in 2018 (ITC, 2019). Supplies come particularly from Colombia, Ethiopia, Ecuador and Kenya. The Netherlands' import capacity is owed to the Dutch flower auctions, specifically Royal FloraHolland which functions as the main trade hub for flower imports and exports worldwide. For example, approximately 60% of EU imports enter via the Netherlands (CBI, 2016).

The regulations and requirements of the Dutch auction are considered to be a minimum standard in the floriculture value chain, especially flowers for the European market, which are required to adhere to certain quality standards and certifications (CBI, 2017). Beyond this, there is limited explicit coordination between suppliers and buyers when flowers are traded through the auction system. The auction can indeed be considered a prime example of spot market interactions. There is, however, some coordination between floriculture producers and intermediaries (i.e. 'unpackers') that help them to access the auction.

A growing share of flowers is sold directly from floriculture producers to traders and retailers bypassing the auction system (and the Netherlands altogether). In 2014, at the level of EU imports, about 26% of flowers came directly from developing country suppliers (CBI, 2016). In the Netherlands, direct trade is also on the rise. These direct sales are based on codified quality standards and longer-term contracts, particularly with regard to channels supplying supermarkets. Switching costs for buyers are thought to be rather low. Thus, in case of non-compliance to quality standards, poor communication and information provision, poor packaging, or non-timely delivery, buyers will switch to other suppliers relatively easily (CBI, 2017). This also suggests that the bargaining power of suppliers in the European market is rather limited, also in view of fierce competition among supplier countries (CBI, 2017). Stakeholders interviewed confirmed the relatively high degree of leverage of participating companies over their direct suppliers, which is also because transactions are often based on longer-term relationships that create more space for new initiatives. Leverage further down in the supply chain was seen as less pronounced, also because companies often do not (yet) know their second and third tier suppliers.

Food products

The Netherlands accounted for about 5.9% of global imports in food products in 2018 (ITC, 2019) and is an important importer of high-risk products such as cocoa, soy, and palm oil. More than 6,500 food processing

⁴⁶ In contrast, the substitutability of metallurgical coal from different deposits is significantly more difficult (Sowers et al., 2017).

companies turn these into semi-finished products, ingredients and consumer products, with net sales of close to €85 billion in 2019 (USDA, 2020). The products are then sold on the retail market via different transporters and wholesalers—mostly through supermarkets which account for 52% of food retail, with net sales of around €42 billion in 2019 (USDA, 2020; Agrifoodtech Platform, 2019).

Traditionally, food products were considered homogeneous commodities that were predominantly traded on spot-markets. However, this has changed as food safety, quality and sustainability aspects such as freshness, convenience, diversity, branding, and environmental/social impacts in production processes have become increasingly important. As a result, quality and safety standards imposed by retailers, processors, and by the public sector, have become more stringent and widespread. This has induced a shift towards more explicit coordination in the value chain, mostly towards captive relationships, involving certification and auditing of farmers, preferred supplier-relationships, and contract farming but sometimes also towards vertical integration (hierarchy). Much of this is fuelled by sector dynamics, such as market concentration among retailers and heavy price competition. NGOs, in particular, have increasingly drawn attention to the power of supermarkets in shaping both what consumers buy and how food is produced, and consider them the heavy-weights of the food products sector (ten Kate, 2017; ten Kate & van der Wal, 2017; Franck & Nemes, 2018).

Forestry

The Dutch market share in trade in timber and wood products was around 2% in 2018 (ITC, 2019). Among EU countries, the Netherlands is one of the main importers, with an estimated share of EU timber imports of 15% in 2018 (White et al., 2019). This is because the Netherlands re-exports timber and also does not produce much timber itself. In fact, the Netherlands relies on imports (94%) to cover its timber needs; the largest proportion is imported by timber traders and wholesalers that saw the wood before selling it to other users. Softwood is mostly used for wood packaging (e.g. pallets, boxes), construction and the garden sectors. Plywood (or sheet materials) are mostly used by the construction, interior building and furniture sectors. Only 5% of imported timber consists of tropical hardwood, most of which is imported from Malaysia, Gabon, Cameroon and Indonesia (by order of importance) (CLO, 2020). Tropical hardwood is used in all sectors but in small quantities; the largest buyers are the carpentry sector and specialised retailers in tropical hardwood.

Timber value chains are characterised by low transaction complexity, high ability for codification, and medium capabilities by suppliers (van den Berg et al., 2013). In principle, the market-governance system would thus suffice. However, coordination has become more important to meet the high regulatory demands on timber traceability (European Timber Regulation, EUTR) and requirements by certification schemes such as FCS and PEFC. This has brought changes in the way that transactions in the timber supply chain are organised; while there has been a shift towards some vertical integration, currently the most prevalent form of governance is relational contracting (i.e. long-term relationships with preferred low-risk suppliers). Key informants indicated that supply chains are relatively transparent, at least for importers. They also reported that the Dutch companies that source timber have increasingly less leverage in their global value chains (e.g. with forest managers), as companies are relatively small and emerging economies, in particular Asian countries, have increased their market share considerably in recent years. Within the EU, however, Dutch companies have some leverage when it comes to sustainably produced timber as the Netherlands is the frontrunner of importing certified timber of which a proportion is sold onto neighbouring countries.

Garments and textile

The Dutch market share in the global textile sector (imports) was estimated at 2.6% for 2018 (ITC, 2019). China, Bangladesh, Turkey and Vietnam (by order of importance) are the main countries from where Dutch

companies import. Significant quantities are also imported from Germany and Belgium—in this case one can rather refer to re-imports of finished garment items.

Sourcing by textile companies is largely based on cost, delivery time and speed to market, agility and compliance with quality standards (Andersson et al., 2018; Arrigo, 2020), which is where much of companies' competitive advantage is grounded in (Andersson et al., 2018). Production, in turn, is highly labour intensive and features mostly low-skilled workers, cheap input materials, simple production steps and low value-added activities. This is why the garment industry is typically considered to be the place where captive governance is operative since a buyer has less dependence and a supplier has higher dependence on the relationship (Lee et al., 2020). While these may prevail in the case of large multinational companies, this does not necessarily denote that buyers are able to track and trace their entire supply chain. For example, Dutch buyers often only have direct connections with the next supplier or an intermediary agent, but not with lower-tier suppliers, which limits their ability to directly control the practices used during earlier stages of the production processes. Companies, especially SMEs, frequently do not even have a good overview of lower tier suppliers—something which is now changing in the context of the reporting requirements of the garments and textile agreement. Leverage over first tier suppliers varies, depending on company size, order volume and complexity, alternatives available and duration of relationship. The latter was particularly identified as a source of influence by Dutch companies in case other leverage options are not available. At the same time, interviewees recognised that the leverage of individual companies, particularly SMEs, is limited, also because manufacturers have multiple buyers. Moreover, large first-tier suppliers have become increasingly powerful over the past few years and have developed various means of evading buyer pressure (Soundarajan et al., 2018; Fontana & Egels-Zanden, 2019). New growth markets in Asia and elsewhere have few or even no RBC requirements, which also reduces the leverage of Dutch companies (Andersson et al., 2018; McKinsey & Company, 2020).

Gold

The Netherlands is a small player in the global gold market and constituted less than 0.1% of the world market in 2018 (ITC, 2019).⁴⁷ Even the EU as a whole accounts for only 2% of worldwide gold consumption (Convenant Verantwoord Goud, 2019). By far the most important trading partner for gold imports is Germany with nearly 80%, followed by Austria and the UK. There is little direct import from gold mines and producing countries (where China dominates as the biggest producer), but there is a direct connection to the Netherlands, as Dutch banks, pension funds and insurers are involved in financing large-scale mining production (van Gelder & Smit, 2015; Dutch Banking Sector Agreement, 2019c).

The global gold value chain is characterised by the large number of actors involved worldwide; gold is traded and refined several times across different continents before reaching the final buyer; and the majority of the world's gold is traded over-the-counter at the London Bullion Market based on spot market prices. Bullion banks are the key middlemen of the gold world (Dutch Banking Sector Agreement, 2019c)—far removed from the actual producers (or actual buyers of the end product). Traceability has become a key requirement based on different governmental regulations and initiatives, such as the EU Conflict

⁴⁷ This excludes gold traded via the Dutch islands in the Caribbean, which has more recently attracted attention as an important transit route for 'conflict gold' mined in Venezuela, i.e. gold mined under the control or supervision of armed groups. This gold trade is largely absent from the statistics, but well documented (Ebus & Kalkman, 2019) and seems to have also transited further via Schiphol to gold smelters in Switzerland. In mid-July 2019, both the governments of Aruba and Curacao have declared direct and indirect gold imports from Venezuela illegal.

Minerals regulation⁴⁸, but is, for this reason, very complex (Partzsch & Vlaskamp, 2016; Ramdoo, 2015; Bloomfield, 2017).⁴⁹

Most of the gold used in the Netherlands is in jewellery (52%), investments (39%), industry (5%) and medical industry, e.g. dentists (3%) (Covenant Verantwoord Goud, 2019). Dutch jewellers claim to primarily make use of recycled gold. Interviewees indicated that in jewellery production 95-98% of gold comes from recycled sources, either directly brought in by clients or bought from smelters/traders who also use primarily recycled gold. Worldwide, however, the use of recycled gold accounts for only 25%, whereas 75% of annual gold demand is met through newly mined gold (World Gold Council, 2020). Interviewed participants of the gold agreement consider their own gold supply chain as relatively straightforward, with only a few entry points (wholesalers) in the Netherlands, a handful of traders/smelters in Germany and two to three refineries in Europe (Switzerland) serving the Dutch market. This indicates that the downstream part of the chain, up until the 'choke' point of refiners, may be traceable (although not for all actors), but this becomes significantly more difficult for the upstream part of the chain. Certification schemes have been increasingly common in the gold chain, although market shares are not known and certification for artisanal mining is still in its infancy (Dutch Banking Agreement, 2019c; Eslava, 2018). Moreover, the most common certification initiatives, especially from the Responsible Jewellery Council, are criticised for lacking traceability and chain of custody requirements (Human Rights Watch, 2018).

Metals

The Dutch market share in international imports of metals was at 2.4% in 2018 (ITC, 2019). While the majority of the 12,245 metal-using companies in the Netherlands are SMEs (KPMG, 2014), the signatories of the metals agreement are mostly large producers of ferrous (iron) and non-ferrous (zinc, aluminium, lead, nickel, tin, silver, gold) base metal, as opposed to smaller processors of base metal. Metal producers supply basic metals and semi-finished products for further processing to other industries, such as the automotive, construction, chemicals, aerospace and electronics industries. As such, the raw materials used in the Dutch metal sector are homogeneous. Quality mostly depends on concentration levels, uniformity of composition, and contamination. Transactions are, as a result, not complex and easy to codify. While spot-markets are prevalent and working well, a lot of the trade is based on long term (3-5 year) contracts to guarantee supply for metal producers (OECD, 2019b).

Manufacturers typically have direct contractual control only of tier 1 suppliers, although may have some influence on tier 2 suppliers (Young et al., 2019), which suggests that there is some leverage of buyers on the behaviour of suppliers. Manufacturers have less oversight of the raw material sources used in their products as mines are often 8 or 10 tiers removed from the end-product (Kim & Davis, 2017). Tracking and tracing of minerals sources are thus challenging in view of the number of actors involved in the chain, complexity of international commerce—including trade of intermediate materials—and business confidentiality (Young et al., 2019). Moreover, additional barriers to transparency include mixing of mineral ores, mixing of primary materials with recycled sources, chemical transformation of minerals to metals, and physical conversions in form like melting (Young, 2015). Smelters/refiners that handle raw minerals and transform them into metals are therefore considered the choke points of metals supply chains—they are closer to the original source of mineral extraction and often have specialised facilities demanding high capabilities (Grado, 2018). While the literature suggests that manufacturers ought to 'jump' tier 1 suppliers and exercise leverage directly on smelters and refiners to mitigate supply chain

⁴⁸ The EU Conflict Minerals regulation requires all EU gold importers to carry out due diligence on their supply chain from 1 January 2021.

⁴⁹ Since 2014, all gold refiners part of the London Bullion Market Association must maintain a responsible gold certificate that supports due diligence.

problems (Young et al., 2019), interviewed companies suggested that both mineral traders and smelters/refiners are holding back information on the extraction location of minerals as a source of competitive advantage. They indicated that individual pressure by a single company is insufficient and collective leverage is required—something which has not yet happened thus far.

Natural stones

The Netherlands imports natural stone products from suppliers worldwide. Approximately 40% of imports of monumental and building stone are from India and China—which are both considered high-risk countries with regard to adverse social and environmental impacts (e.g. Glocal Research et al., 2015). A large share of natural stones is also imported from the USA, Germany, Belgium and Italy (ITC, 2019), the origins of which are not known. In 2018, the Netherlands' share of the worldwide natural stone trade value was 1.82 %, i.e. globally, the Netherlands is a small player in this sector and its RBC leverage can thus be considered to be low (ITC, 2019). Dutch companies in the natural stones sector, of which there are an estimated 800, are also often small in size with fewer than 10 employees (Nauta, 2017; van der Gaag & de Graaf, 2014).

Leverage is further impeded due to the structure of natural stones supply chains, as much of the upstream chain is based in the informal sector, with documentation lacking on sources of stones and significant blind spots in relation to many levels of the supply chain (Marshall et al., 2016). According to stakeholders interviewed, companies know their tier 1 supplier, but have generally little information on suppliers further upstream in the supply chain. Many companies do not even know the origin of the stone. With limited leverage, visibility and control beyond tier 1 of the supply chain, engaging with lower tier suppliers, particularly quarries, is a major issue for stone companies (ETI, 2015). Widespread informality, a lack of law enforcement and low expectations from local buyers on ethical practices offer few incentives for suppliers to make changes (ETI, 2015).

Financial sector: banking, insurance and pension funds

The relationship between an investor or a loan provider and a company is qualitatively different than the buyer-supplier relationship in value chains (OECD, 2017). Although loans and investments are often subject to long-term contractual relationships—particularly in the case of corporate lending, project finance and private equity—the investee and the investor typically find each other on the financial market. This market is characterised by a very large number of investors and investees and coordination is predominantly based on stock prices and interest rates. This suggests that companies can easily shift to investors with less strict RBC requirements. The leverage of investors also depends on the type of investment (loan vs. equity, private vs public equity, the size of share, etc.). A loan for project finance, for example, is often a syndicated loan, which is a loan offered by a group of lenders. In this case the leverage of one investor may thus be more limited than in the case of a corporate loan where there is a more direct relationship between the investor and investee. Another factor that influences leverage is whether asset management is outsourced to external services providers (funds), because this creates an additional actor in-between the investor and the company receiving finance. Regardless of these constraints, observers and CSOs suggest that the financial sector should give itself more credit, and assume responsibility, for its leverage on customers and investees (de Felice, 2015; Mulder, 2015; see also Eerlijke Bankwijzer, 2019).

The Dutch banking sector is highly concentrated with limited activities of foreign banks (DNB, 2015). Particularly the 'Big 3'—Rabobank, ING and ABN Amro—are considered to hold considerable leverage over investees. Each are part of the top 80 banks in the world with combined total assets of around to €2 trillion (S&P Global Market Intelligence, 2020) and they control between 60-80% of the banking markets for mortgages, business loans and savings in the Netherlands (DNB, 2015). Influence over clients is considered highest at the moment of a bank's decision as to whether or not, and on which conditions, to provide finance. Influence then decreases significantly once finance has been provided (Thompson, 2018).

Insurers are likewise considered to have influence on investee companies and especially large insurers indicated already making use of their leverage towards external asset managers (Convenant Verzekeringssector, 2019b). Insurers that have a major shareholding in a company have an easier time leveraging their influence than insurers that have only a small shareholding (Convenant Verzekeringssector, 2019b). Leverage also differs per type of investment. For example, with shares insurers can use their voting rights and shares are tradeable, making it relatively easy to act, according to insurance companies interviewed. Corporate bonds, on the other hand, are longer term loans and the investor has no voting rights. However, because it is a longer term relationship, engagement in the form of dialogue—or divestment—becomes possible (Convenant Verzekeringssector, 2019b).

Pension funds mostly outsource their investments and only rarely invest themselves. Relationships with investees are thus not direct. Yet even in those outsourcing relationships, pension funds can have leverage, depending on the size of investment. While a pension fund's leverage is generally high when the fund has a segregated mandate or a majority share in an investment fund, most pension funds hold minority shares. According to interviewees, this limits the pension fund's leverage.

6.3 Results on sector-specific themes

Chapter 2.5 discussed the sector-specific themes of the different RBC agreements. There is a general recognition that RBC agreements cannot work on all sector-specific themes at the same time, or possibly within the agreement's duration. Yet, even under these delineations, progress on specific themes is rather unclear. On the one hand, this is because there are few concrete commitments on sector-specific themes against which progress can be measured, also because the themes may or may not coincide with the risks identified in companies' due diligence. An exception in this regard is the commitment pertaining to a minimum wage in the floriculture agreement. The parties committed, in countries where there is no legal minimum wage, to at least pay a wage above the international poverty line of US\$ 1.90 per day in production locations of floriculture products. While this commitment should hold from April 2020 onward, it has not yet been achieved. Barriers were initially encountered to establish an overview of where participating companies source from and no reporting formats had been agreed upon at the time of the interviews conducted in March 2020. The deadline was then postponed due to the severe impact of the Covid-19 pandemic on the flower sector.

On the other hand, reporting by RBC agreements on how they address and progress on their selected themes is rather poor, offering few, if any, details on results achieved. The notable exception is the upcoming 2019 report of the agreement on garments and textile (Convenant Kleding & Textiel, 2020) (Box 9). There is also little knowledge on how themes are integrated into companies' due diligence processes (again, this is not reported at the level of RBC agreements).

Interviews and annual reports of RBC agreements suggest that most activities on sector-specific themes have taken place in the context of specific working groups, where selected themes are elaborated and analysed. Concrete outcomes include tools or guidance documents in support of companies' due diligence, but there are also examples where no tangible outcomes were achieved. This is the case in the insurance agreement where a working group discussed the theme of year 1 (climate change and energy transition) but, at the time of our interviews, had not managed to produce a concluding joint statement. NGOs interviewed expressed their disappointment with the lack of specific results achieved, such as developing thematic key performance indicators (KPIs) for insurance companies. The sector, in turn, has indicated that it has already dealt a lot with climate change outside of the RBC agreement, such as in the Platform Carbon Accounting Financials and the Dutch Climate Agreement.

Box 9. Progress on sector-specific themes in the agreement on garments and textile

1. LIVING WAGE: collective project (training for all brands and 47 selected suppliers); bilateral project between two companies; tools for companies
2. CHILD LABOUR: collective Fund against Child Labour (FBK) project in India and Bangladesh; tools and workshops for companies & suppliers
3. DISCRIMINATION & GENDER: workshops for companies
4. FORCED LABOUR: awareness raising by secretariat; collective FBK project India and Bangladesh
5. FREEDOM OF ASSOCIATION: workshop and tool for companies
6. OCCUPATIONAL HEALTH & SAFETY: collective project in China; lobbying of Dutch Embassy with Government of Bangladesh
7. WATER, CHEMICALS & ENERGY: collective project in China; workshop for companies
8. RESOURCES: overview of materials used by companies; workshop and tool for companies
9. ANIMAL WELFARE: factsheets of key risks; workshops and advice for companies

Progress is more tangible when sector-specific themes are addressed in collective projects by RBC agreements (

Table 22). Four agreements (garments and textile, gold, food products and TruStone) have so far initiated collective projects on specific themes, and the floriculture agreement has expressed an ambition for a collective project, but plans are currently on hold in view of the impact of the Covid-19 pandemic.

Table 22. Sector-specific themes addressed in collective projects

RBC agreement	Theme	Project	Status
Floriculture	Living wage	Parties have agreed to start a living wage project within the first year of the agreement, but there are no concrete plans as of yet. There are indications that the crisis caused by the Covid-19 pandemic will delay or may even risk the start of the project.	Commitment, but no plans.
Food products	Living wage	Fourteen supermarkets, the sector association CBL and IDH have signed a declaration of intent to start a collective project in the banana sector to close the living wage gap of workers by 75% within 5 years for bananas sold by Dutch retailers.	2019-2025 (ongoing)
Garments & textile	Child labour / freedom of association	From 2017 to March 2020, a coalition of parties and companies worked together on child labour, and later freedom of association, in clothing supply chains in India and Bangladesh. Participating organisations included six companies, a sector association, NGOs and support partners.	2017-2020 (Completed)
Garments & textile	Living wage	The agreement organises activities around living wage for signatory companies (two mandatory trainings for companies in 2019) and suppliers (trainings held for 47 suppliers in 2019).	2019-not known (ongoing)
Garments & textile	Pollution, resource use, occupational health and safety	Together with six companies, the project aims to improve the environmental and social performance of selected Chinese dye houses that supply Dutch brands.	2018-2020 (ongoing)
Gold	Child labour in artisanal and small-scale mining	The project between Solidaridad, UNICEF, Hivos/Stop Child Labour, Fairphone and Philips aims to establish a sustainable and traceable gold supply chain in Busia, Uganda	2017-2021 (ongoing)
TruStone	Child labour	A pilot project on child labour in natural stone production in India aims to learn lessons on how companies can actively reduce RBC risks in the supply chain.	2017-2020 (ongoing)

6.4 (Examples of) impact on the ground and improvement for possibly affected people and communities

All RBC agreements, albeit to varying degrees, contain an ambition to achieve positive impact on the ground. The agreements on garments and textile, TruStone and food products speak of impact within a timeframe of three to five years, and the floriculture agreement even envisages impact within three years. In the case of the pension fund agreement, only the 'Deep Track' contains an ambition of creating impact on the ground, by developing "forms of cooperation aimed at increasing the leverage of participating pension funds in their engagement with listed investee companies with a view to preventing, mitigating and/or remediating (possible) adverse impacts by these companies" (Covenant Pensioenfondsen, 2018).

Most RBC agreements—except for forestry and, to some extent, coal—follow two main pathways (assumptions) to achieve impact, according to IOB (2019). Firstly, compliance with due diligence is assumed to have a positive impact on adverse risks in supply chains, as companies take measures to reduce, prevent or mitigate identified risks, e.g. by using leverage in their supply chains or client relationships. Secondly, impact can be achieved through collaborative projects between companies and other parties in the agreement that focus on RBC risks in a specific location. A third impact pathway, which is particularly relevant for forestry and also coal, focuses on the effect of certification on reducing RBC risks at production level. Finally, a number of RBC agreements also aim to create impact by creating outreach to non-signatory companies and other initiatives, for expansion, alignment and, ultimately, scaling of impact.

6.4.1 Impact through due diligence

The first pathway for achieving impact through due diligence-related change processes clearly depends on effective due diligence systems by companies. However, the experiences of RBC agreements so far highlight that realising—and showing—impact through due diligence is challenging. Different limitations were mentioned by different interviewed stakeholders and third-party studies.

First of all, it takes time for companies to have due diligence systems up and running, especially for those with little or no prior experience in this regard. As shown in Chapter 5.5, only the agreements on garments and textile and banking have made substantial progress on companies' due diligence compliance. The mid-term evaluation of the garments and textile agreement concluded that positive impact for adversely affected parties requires more progress by companies in addressing problems in the supply chain—in which case 5-10 years would be a more realistic timeframe (Rutten & Oudendijk, 2019). Respondents from the banking agreement and the agreement on garments and textile confirmed in unison that expecting impact, especially in an uneven international playing field, is not realistic within a timespan of three years (see also Box 10).

Box 10. Changing purchasing practices under the agreement on garments and textile

In the garments and textile agreement, companies' purchasing practices have been recognised as an important source of adverse impact and are addressed through various means, including annual assessment conversations, online tools for member companies and training.

Some changes have been observed so far: in 27 participating companies, RBC managers have a veto right when it comes to sourcing from new suppliers. In addition, 13 companies have changed their supplier codes to 'two-way' codes of conduct, which include specific responsibilities for buyers and suppliers (Covenant Kleding en Textiel, 2020). The remaining companies, however, continue to use 'one-way' codes of conduct, telling suppliers what they are expected to do without addressing their own responsibilities.

General challenges of changing purchasing practices can thus be observed in view of global competition and high price pressures in the industry. An analysis of the secretariat concludes that (1) purchasing practices are perceived as something 'extremely big' that are difficult to change; (2) suppliers are often not considered as 'partners' to be involved in shaping purchasing practices; and (3) commercial KPIs dominate buyers' decision making (Agreement on Sustainable Garments & Textile, 2019). A recent survey published by the agreement on garments and textile, together with the German Partnership for Sustainable Textiles (PST) (2020), offers similar findings (pre-Covid). On a positive note, the study showed that companies indicated having long-term relations with audited suppliers based on clearly communicated codes of conduct. However, brands usually do not account for labour costs in costing models and price negotiations, offer few incentives to reward suppliers' ethical compliance and do not make responsible sourcing as part of companies' KPIs.

In the context of the Covid-19 outbreak, companies' purchasing practices have re-entered the public spotlight (ECCHR, 2020), as many fashion companies, including European ones, have put their orders on hold or have cancelled them—with devastating consequences to manufacturing locations and their workers (Hertzman, 2020). The parties of the agreement on garments and textile have therefore issued a call for responsibility during the corona crisis, including not cancelling orders that have already been produced or are in production (Agreement on Sustainable Garments & Textile, 2020).

Secondly, doing well on paper does not necessarily translate into impact on the ground (SOMO & SKC, 2019; MVO Platform, 2020). In the case of the banking agreement, the monitoring committee (2019) recognised that "[impact on the ground] is the major challenge for the agreement and it is understandable that CSOs and trade unions are keenly awaiting these concrete results." For the agreement on garments and textile, coal, banking and food products, NGOs have repeatedly criticised that companies do not show how their due diligence efforts lead to concrete improvements for affected groups and communities or which role they play in addressing specific adverse impacts (Oxfam Novib, 2019b; SOMO & SKC, 2019; BankTrack, 2019; MVO Platform, 2020;). Criticism has been particularly strong in the case of the coal agreement (see Box 11). Interviewed companies from different sectors, however, emphasised the challenge of measuring impact of due diligence. While compliance and other commitments to RBC agreements can be assessed, possible effects on affected groups and communities are difficult to measure and to attribute to a specific RBC agreement, let alone an individual company. Therefore, bank representatives interviewed argued that the measured impact of RBC agreements should be at the level of companies instead of on the ground.

Box 11. Improvement for affected coal mining communities in Colombia?

One of the ambitions of the coal agreement included stimulating Colombian mining companies to make agreements within the Colombian peace process about the compensation for victims of past violence (TK, 15 June 2016). Energy companies have mostly seen their own role in encouraging mining companies to participate in conversations with victims and explicitly referred to the responsibility of the Colombian Government to lead these conversations (Coal Covenant, 2018). In addition, the Dutch Embassy in Bogota has advocated for dialogue between mining companies and communities and has funded multi-stakeholder dialogues in support of peace efforts (Quintero et al., 2019; Coal Covenant, 2020). The Embassy's support was a driving force for a joint public declaration on the protection of social leaders and human rights defenders, signed by the four large mining companies (suppliers of Dutch coal), the Colombian Government and CSO representatives (Quintero et al., 2019).

While Dutch NGOs have publicly applauded these, they also emphasise that a direct dialogue between victims of past human rights violations and most mining companies has not yet started (e.g. PAX, 2019, 2020). At the same time, threats and violence against human rights defenders in mining areas, such as union and community leaders, have increased in recent years. In 2015-2019, 33% of attacks on human rights defenders in Colombia happened in the mining sector, making it the country's economic sector with the highest reported cases of threats to life and security (Business & Human Rights Resource Centre, 2020). The final report of the coal agreement recognises the continued numerous challenges in Colombia's coal mining sector (Coal Covenant, 2020). However, it merely points out that mining companies claim to work on improving their practices, including in the context of Bettercoal, and participate in multi-stakeholder dialogue to increase trust and enable access to remedy. Interviewed NGOs therefore expressed their disappointment with the lack of concrete evidence of how the agreement parties engaged with the adverse impacts created through coal mining.

Thirdly, part of the impact pathway of due diligence includes providing improved access to remedy via effective complaint mechanisms (IOB, 2019). This is also reflected in the objectives of all RBC agreements, with the exception of the forestry agreement. However, remediation is mostly considered an individual responsibility for companies and is hardly, if at all, reported at agreement level. There are also concerns that the concept of a complaints mechanism is misunderstood as internal whistle-blower procedures. At this stage, only the agreement on garments and textile has a collective formal and informal complaints mechanism for affected parties in line with the UNGPs; TruStone committed to establishing such a mechanism in the first year of the agreement and the food products agreement is considering the development of a complaints mechanism for external parties.

The frontrunner role of the agreement on garments and textile is relevant in as much as there is a traceable link between the production locations published by the agreement and signatory companies (mostly at aggregate level)—which contrasts the lack of transparency in other supply chains. So far, 27 cases of (alleged) adverse impact have been lodged with the secretariat through the informal complaints mechanism. None have been forwarded to the Disputes and Complaints Committee (formal complaints mechanism), as all cases have been reported otherwise resolved or are in the process of mediation. Details are not public due to confidentiality reasons. There is a general recognition that the hurdles for local stakeholders to submit complaints are considerable (e.g. lack of awareness, language barriers, fear of reprisals) (SKC & SOMO, 2019; Newton et al., 2019). Much depends on Dutch CSOs and their local partners to file complaints. The complaints procedures themselves are also rather unclear and not transparent (Rutten & Oudendijk, 2019; OECD, 2020). Thus, some components of a complaints mechanism are in place, but are not fully functional. Interviews suggest that steps are being undertaken to improve the functioning of the complaints mechanism, including considerations of linking with the established complaints mechanism of the Fair Wear Foundation.

Finally, several interviewees indicated that a different setup of the RBC agreements might be required for achieving impact on the ground. Company representatives argued that the focus of RBC agreements lies on due diligence reporting rather than achieving positive impact. The 'Wide Track' of the pension funds agreement therefore lacks any ambitions for concrete impact on the ground—which was commented on by interviewed funds as a realistic expectation in view of their widespread investment portfolio.

Interviewees instead hoped to see impact through collective engagement with investees and local partners in the 'Deep Track' of the RBC agreement.

In the case of the agreements on banking and garments and textile, the lack of measurable positive impact on the ground, as noted by evaluation reports and interviewees, led to a reflection on the approach taken. For example, the monitoring committee of the banking agreement questioned whether the extensive focus on company compliance, although useful, served the agreement's purposes in the best way (Dutch Banking Sector Agreement, 2019b). Interviewed banks similarly argued having spent a substantial amount of time on reporting as per the agreements' requirements, compared to the time spent on the actual content of human rights due diligence. The recent launch of a collective project in Indonesia in the post-agreement phase can therefore be considered a direct response to the calls for action in the banking agreement: in January 2020, CNV International, (Mondiaal) FNV, Rabobank and NVB started a two-year project to improve workers' rights on selected palm oil plantations in Indonesia.⁵⁰

In the agreement on garments and textile, the findings of the 2019 mid-term evaluation have set in motion a broader discussion on how to use the remaining time until May 2021 to increase impact—instead of concentrating too much on having companies complete due diligence requirements. Indeed, an increased focus on impact can already be observed: five new collective projects are planned—noting that realisation will depend on funding and companies being able to commit to the projects in view of the economic crisis of Covid-19. Moreover, two signatory companies have started a bilateral project in September 2019 to pay living wages in a Pakistani textile factory. Together the two companies account for approximately 75% of the supplier's production, which was considered an important facilitating factor for the project. The companies emphasised the complexity of calculating and implementing a living wage, seeing existing differences in wage levels, a highly fluid workforce with many workers often not being formally employed and high uncertainty on the future minimum wage level (SER, 2019b).

6.4.2 Impact through collective projects

As mentioned, not all RBC agreements work—or aim to work—with collective projects.⁵¹ In addition to banking, insurance and 'Wide Track' of the pension funds agreements, the forestry agreement⁵² and coal agreement did not have a collective project. In the coal agreement, the Government and energy companies mostly implemented their responsibilities towards the agreement objectives separately.⁵³

The collective projects all address different sector-specific themes and deal with actual adverse impact in producing countries. Participants interviewed are usually positive about the projects and consider them as valuable learning opportunities—for example, on collaboration between companies and NGOs, on engaging with suppliers in producing countries, and on testing approaches and methodologies for improvement. In view of the pressure that several companies reported experiencing, especially from NGOs on 'taking responsibility for adverse impact', the collective projects also serve as opportunities for

⁵⁰ This project aims to stimulate and enhance collective bargaining agreements, social dialogue and freedom of association. Specifically, the project will set up a database on collective bargaining agreements which will be used to improve the monitoring of labour rights. The project is co-financed by RVO (70% of estimated project costs of €300,000).

⁵¹ There is a discussion in RBC agreements on what constitutes a 'collective project'. Here we only include projects that a) comprise different partners in a multi-stakeholder setting; b) address a concretely identified adverse social, environmental or human rights impact; c) with, at least some, collective activities in the location where the identified impact occurs.

⁵² Although pilot project proposals were developed by the forestry agreement, these did not match well with the funding criteria of the CSR fund of RVO.

⁵³ In the context of the termination of the coal agreement, energy companies have expressed their support for the 'Just Transition' initiative to develop economic alternatives and policy measures for areas affected by mine closures. The various partners within this initiative have recently applied for support by the Dutch State under the 'Fund for Responsible Business' (FVO) (Coal Covenant, 2020).

companies to show goodwill, motivation and commitment (reputation management). In the TruStone and gold projects, the role of intrinsically-motivated frontrunner companies is particularly pronounced. Except for the banana project in the food products agreement, the projects' impact ambitions do not convey clear targets and results to be achieved. For the child labour projects in textile, gold and natural stones, respondents described that project ambitions changed over time, as first insights were gained. For example, the project in India initially concentrated on child labour but later focused more on working conditions and freedom of association, as child labour was found to be less of a problem in the participating factories and can rather be an issue further up in the value chain, e.g. in spinning mills and on cotton fields. The child labour projects in gold and textile also reported delays in the first project years, as engagement with local value chain actors proved challenging. For example, in the gold project, project partners faced several instances where mistrust between project implementers and local communities was heightened (e.g. after government evictions in a well-known mining area in Uganda leading to artisanal and small-scale miners (ASM) being more careful to disclose information to outsiders) (RVO, 2020).

Below we briefly describe key projects that are taking place in different RBC agreements.

Addressing child labour in ASM gold mines in Uganda (2017-2021)

In 2017 Fairphone, Philips, Solidaridad, UNICEF and Hivos/Stop Child Labour created a five year partnership with RVO funding to proactively support more responsible gold sourcing, focusing on preventing child labour, improving working conditions and providing access to markets for ASM mines in Uganda. The project cooperates with three ASM cooperatives as well as local government authorities. Some achievements have been reported so far, including the establishment of two child-labour free zones (although it is unclear how many zones there are in the area), training of 15% of ASM cooperative members, and the installation of a mercury-free gold processing centre.

However, overall there is limited evidence of impact and respondents were sceptical of the actual effects at community level. On the one hand, the project is considered too small to make an impact. A number of respondents also suggested that the project does not tackle key issues which they perceived to impact on ASM production, such as corruption, criminal networks in trading and the informality of the sector. On the other hand, Uganda is not a large gold producing country (it does not feature in the top 15 producers in Africa, according to the World Gold Council) and therefore the project does not deal with a relevant supply chain for agreement signatories. While the two project-companies have expressed interest in using the gold from the project in their supply chain, different logistical barriers (including small quantities) have acted as barriers to this idea. Therefore, interviewed stakeholders considered the biggest value of the project in serving as a demonstration to show goodwill of the Dutch gold sector and that small improvements, such as mercury-free production zones in ASM, are possible. Solidaridad (2019b) therefore called for more projects to be launched to support small-scale miners and to "smooth the slow progress and cooperation in the gold agreement". Interviewed companies, however, expressed a preference for the Dutch Government to take the lead in an international approach to exercise pressure on producing countries to improve mining conditions, rather than focusing on 'isolated projects'.

Remedies towards a better workplace in the Indian and Bangladesh garment sector (2017-2020)

This project was implemented in India and Bangladesh by a group of parties, including six brands, of the agreement on garments and textile, which started in September 2017 and funded by RVO (FBK). The project initially focused on child labour but later shifted to working conditions and freedom of association. Activities in India entailed two main components: engaging participating brands in a collaborative mapping exercise with their tier 1 suppliers to map the entire chain, and a training programme, which was implemented in 26 factories (manufacturers and spinning mills) that supply to participating companies. Activities in Bangladesh focused on implementing UNICEF's 'better business for children' approach in supplier facilities and training on supply chain transparency provided to nine suppliers.

While the final project report is not yet publicly available, interviews with participating stakeholders suggest that they are positive about the project's achievements, including increased trust between participating companies and NGOs, contacts to local organisations, increased engagement of brands with supplier factories, and improved supplier policies on child and forced labour. The 2019 annual report of the garments and textile agreement states that the training programmes in India and Bangladesh have reached more than 12,000 workers (educating them about their rights) and 30 factories/spinning mills (management training) (Covenant Kleding & Textiel, 2020). The report further declares that this has improved working conditions and increased wages or financial stability for 9,000 of the workers reached. However, this information could not be verified with third parties.

Pilot project on socially responsible procurement and child labour in the natural stone production chain (2017-2020)

In the natural stones sector, a number of parties started a pilot project in September 2017, i.e. two years before TruStone came into effect. According to interviewees, the project was initiated even prior to having an agreement because the FBK provided an ideal opportunity to get some concrete activities off the ground—but also because it had turned out to be difficult for stakeholders to get to the negotiation table. The project succeeded in giving the agreement negotiations a boost—some interviewees even think that TruStone would not have been agreed without the pilot. Indeed, the pilot became the mechanism to get contracting authorities involved in TruStone, which had been a key barrier for success in earlier RBC initiatives in the sector.

The project's aim is to learn lessons on how socially responsible procurement could stimulate companies to contribute actively towards reducing RBC risks, especially child labour, in the supply chain. The pilot project teaches governments how to include the demand for sustainable natural stone in their tenders, in accordance with international law and without delays. The pilot is also directed at suppliers and importers bidding for tenders, so that they understand due diligence and know where their responsibility lies. According to participants interviewed, the project does not have an ambition to work on the direct effects of natural stone production on the ground. The focus lies on learning and relationship-building with suppliers.

Sustainable dye houses in China (2018-2020)

This project works with nine dye houses in Shanghai, Jiangsu and Zhejiang that supply signatory brands to improve their sustainability performance. The project is financed by the Ministry of Foreign Affairs (Consulate General in Shanghai) and implemented by engineering firm Arcadis. The aim is to support dye houses in pollution prevention (chemical use and treatment), reducing resource consumption (energy, chemicals, water) and improving workers' safety and health.

In the first project phase, visits to factory sites were made to assess environmental and social performance. As part of the second phase, Arcadis is currently advising the factories based on the assessment results through online sessions. In addition, baseline results were shared with participating brands who are supposed to use their leverage and have a dialogue with the factories on required improvements. Brands are also expected to assist their suppliers to obtain the necessary knowledge or investments to make improvements. A second round of site visits is planned for the fall of 2020 to monitor improvements undertaken, before the project terminates at the end of 2020. As there is no further information available on this project, it is impossible to assess the project's outcomes and (potential) effects.

Living wage training in the garment sector (2019-ongoing)

The agreement on garments and textile organises a series of activities aimed at capacity building of signatory brands and selected suppliers on the topic of living wage. For brands, two mandatory workshops were held in 2019.

The 2019 annual report also states that 47 suppliers have participated in supplier seminars about transparency in price structure (open costing), living wages and stimulating dialogue between companies and suppliers (Covenant Kleding & Textiel, 2020). As labour costs are not typically included in costing models and price negotiations (Partnership for Sustainable Textiles & Agreement on Sustainable Garments and Textile, 2020), the seminars' purpose is to enable suppliers to calculate production and labour costs. The seminars are organised in collaboration with the Fair Wear Foundation and the German PST. There is no information yet on possible outcomes of these activities.

Living wage in the banana sector (food products agreement) (2019-2025)

The food products agreement has started a project to improve the wage earned by workers on banana plantations. The project is a collaboration between CBL, 14 supermarket chains, and IDH. Banana is seen as a priority crop in terms of sales volume and RBC risks. The project's goal is to identify and close the living wage gap with 75% by 2025. At this stage, the project is busy identifying the key plantations where bananas for the Dutch market are sourced, and determining the size of the living wage gap. Major challenges identified by parties involved in the project include limited oversight on where companies source from and growers' hesitation to share information on workers' salaries. Fundamentally, there are questions on how to realise the wage commitments while preserving the competitiveness of participating companies, particularly as the banana chain is organised around cost efficiency. The parties are now investigating how to intervene most effectively, including attracting supermarkets in other countries to join the initiative. Other interviewed parties from the food products agreement, however, are sceptical about the project, suggesting that the focus on living wage is too limited (e.g. leaving out working conditions and freedom of association) and asking for further publicly shared information. The project is financed jointly by CBL and by IDH.

Collective engagement in the pension funds' 'Deep Track'⁵⁴ (2019-2021)

The 'Deep Track' currently includes 10 signatory companies and other parties of the pension funds agreement. Every year, the deep track-participants discuss two cases to develop forms of cooperation aimed at increasing the leverage of pension funds in their engagement with (listed) investee companies with a view to preventing, mitigating and/or remediating adverse impacts by these companies. All participating parties deliver information on the concrete cases discussed. Interviewed CSOs have indicated that a lack of funding makes it difficult to retrieve reliable data from local sources. Interviewees also recognise the challenge of validating the partially contradictory information received and identify areas for improvement in collaboration with the local partners and investee company (SER, 2019c). Actual engagement has started through written and phone communication and a field visit was planned for 2020 but has been replaced by a digital field visit due to the outbreak of Covid-19. If the engagement trajectories are successful, these activities are expected to give concrete examples of how pension funds can engage with investees where there are (potential) adverse impacts—which can then lead to improvements for potentially affected people and communities.

6.4.3 Impact through standards and certification/verification⁵⁵

The third impact pathway is particularly prominent for the forestry agreement and, to a lesser extent, for the coal agreement. The other RBC agreements do not explicitly promote standards, certification and

⁵⁴ Collective discussion of cases also took or takes place in the banking and insurance sector agreements. However, in the banking agreement, case discussion was limited to fictional cases in view of client confidentiality and there was no collective engagement. In the insurance agreement, companies are starting this year with collective engagement on cases.

⁵⁵ Note that we do not assess the impact of standards and certification at the relevant level where they are applied (e.g. impact on forest management or mining conditions), but limit ourselves to discussing the progress of RBC agreements in their effects in supply chains.

verification, but do acknowledge that companies may draw on these instruments for their due diligence processes (e.g. gold, flowers, natural stones, textile). However, there is a recognition that these tools can support due diligence but do not, in itself, replace other measures to address RBC risks and adverse impact (see e.g. SER, 2014).

The forestry agreement aims to promote sustainable forest management and increase the market share of sustainably produced timber such as FSC and PEFC. The assumption is that if all timber imported and sold in the Netherlands is certified, this will automatically result in compliance with the OECD Guidelines and UNGPs of companies within the construction, wood packaging, interior building and furniture industries. There is also an expectation that increased demand for certified timber has direct beneficial effects on local communities and workers (White et al., 2019). The Forestry Agreement has set itself the following targets for the increase of market demand for sustainably produced and FLEGT-licensed timber in 2020 (Table 23).

Table 23. Forestry agreement import targets for sustainably produced timber

	2020 Targets	2015 (baseline)	2017	2018
1	90% of sheet material (plywood) is sustainably produced (100% FLEGT compliant)	88%	93.5%	94.5%
2	100% of softwood is sustainably produced	86%	98.4%	99.1%
3	60% of temperate hardwood is sustainably produced	34%	46.6%	59.6%
4	75% of tropical hardwood is sustainably produced (95% FLEGT compliant)	63%	66.1%	63.6%

Source: Convenant Bevorderen Duurzaam Bosbeheer, 2017; 2019

Similar to Table 23, White et al. (2019) estimated that 65%-70% of imported tropical hardwood was certified (slightly above the estimates of the forestry agreement) and 22% of tropical hardwood was FLEGT compliant in 2018, which makes the Netherlands the frontrunner within the EU when it comes to importing sustainable timber. Nonetheless, the results for tropical hardwood are lagging behind the ambitious forestry agreement target. Timber importers indicate that it gets increasingly difficult to sign new contracts for certified tropical hardwood; several certified forest areas are located in conflict areas that are currently inaccessible and market forces are changing due to a growing (competitive) demand for timber from Asia with less stringent standards for sustainability and human rights. Moreover, the building industries reported economic barriers to the use of certified timber as this is one of many (raw) materials used in their operations (e.g. construction). They argued that they have limited resources, low profit margins and many regulations to comply with. As there is little awareness and demand among clients—including large clients such as the government—to use certified timber, and there is no price differentiation for the use of certified timber, this is not necessarily a priority to them. According to Bouwend Nederland, only 27% of all public tenders related to the built environment included some form of sustainability criterion in 2018. The different barriers also highlight that the forestry agreement brings together trade associations from very different sectors; although all use timber to different degrees, the issues they are facing in increasing the use of certified timber are very different.

In the case of the coal agreement, the international Bettercoal initiative, which started in 2012, played an important role in creating leverage in the coal supply chain and crucially, in conducting independent supplier assessments against the Bettercoal code of conduct (Coal Covenant, 2020). Annual progress reports of the agreement emphasised that “Bettercoal audits give insights into ethical, social and environmental performance of suppliers” (Coal Covenant, 2016, 2017). The implementation of required improvement plans is also monitored by Bettercoal (Coal Covenant, 2020). In 2018, about 60% of the purchased coal by participating energy companies was sourced from Bettercoal suppliers (up from 21.4% in 2015)—the rest came from non-assessed suppliers (Bettercoal, 2019).

Due to annual visits of energy companies to Colombia, the key focus country of the agreement, three out of four main mining companies are now part of Bettercoal. They all have their own RBC strategy, conduct risk assessments, publish RBC policies and have signed collective bargaining agreements with a number of trade unions (Quintero et al., 2019). The mining companies have also established complaint mechanisms as part of their RBC strategies, although these only address current and future complaints and not past grievances (Quintero et al., 2019). Mining companies indicated having implemented these measures in response to requests from the energy companies that participate in the agreement (Quintero et al., 2019). Yet, it is impossible to distinguish between the effects of the coal agreement from Bettercoal itself, as both initiatives operated in parallel.

Despite the positive achievements, Bettercoal recognises that many challenges involving the local mining industry remain, including resettlements, political violence and environmental pollution (Bettercoal, 2019). NGO reports also remain critical of the adverse impact of mining in Colombia despite Bettercoal audits (e.g. Greenpeace, 2019; Christian Aid, 2020).

6.4.4 Impact through outreach and scaling

Chapter 4.6.4 discussed the evidence for international scale-up of the agreements on TruStone, metals and garments and textile as part of their outreach and growth ambitions. While the TruStone is the first RBC agreement with bilateral membership, it is still new with no effects resulting from this approach, apart from impact on total membership, can be observed at this stage. The international character of the metals agreement is limited to support declarations by different international sector associations or initiatives, but no concrete results can be reported so far. By contrast, the agreement on garments and textile has initiated a variety of activities oriented at international upscaling. The results of these activities are mostly at the output level at this stage (e.g. associated membership approach with the German PST and OECD alignment assessment completed). Many of these activities primarily aim to support participating companies in their due diligence efforts (e.g. new trainings and tools offered to companies). The potential impact thus depends on the relevance of the support and the degree to which companies integrate new insights or capacities gained in their due diligence (see Chapter 5.4 on support on due diligence).

Other activities, however, have potential for wider impact in the supply chain, including the tentative plans to collaborate with the PST and other initiatives on collective projects in producing countries and the alignment efforts at the EU and OECD levels. The latter, in particular, is an ongoing activity, together with the like-minded PST and Sustainable Apparel Coalition (SAC) initiatives, with the potential to harmonise requirements for companies and contribute to a standardised approach on due diligence in the textile sector. If successful, this can increase the level playing field for Dutch companies. Harmonisation and alignment can also reduce administrative burden by facilitating mutual recognition across initiatives. At the time of the evaluation, however, such impact was not yet observable.

6.5 To what extent do companies need to have their due diligence in place before they can cooperate with the parties to address the negative impacts?

Respondents from different sectors stated their support to collective projects as part of RBC agreements. Nonetheless, it is noticeable that so far only a limited number of companies that are part of or connected to RBC agreements participate in collective projects in production locations. The food products' project (14 retailers), the living wage project in the garments and textile agreement (12 brands) and the TruStone project (11 companies) have attracted the most private sector participation. Other collective projects tend to attract between one and seven companies (Table 24).

Table 24. Company participation in collective projects in production locations

RBC agreement	Collective projects in production locations (ongoing or concluded)	Participating (Dutch) companies	Participating Dutch sector associations
Food products	Living wage in the banana sector	14	1
Garments & textile	Remedies Towards a Better Workplace (India, Bangladesh)	6	1
Garments & textile	Sustainable dye houses in China	7	0
Garments & textile	Living wage capacity development	12*	2
Gold	Addressing child labour in ASM gold mines in Uganda	2	0
TruStone	Socially responsible procurement and child labour in the natural stone production chain	6 Dutch + 5 Flemish	2
Banking**	Collective bargaining agreements in Indonesia	1	1

Explanation: *45 brands have been trained on living wage in 2019 (through 2 mandatory trainings). In addition, 47 suppliers participated in living wage seminars—these are linked to 12 brands, which explains the participant number used here. **Project started after the end of the banking agreement.

Companies' limited participation in projects was also recognised by interviewed NGOs. They emphasised that the idea of projects is to test certain methodologies and make them scalable, which was also recognised by consulted companies. Several NGOs reported that projects give companies concrete entry points of how to engage in a certain region by resorting to the project's experiences. However, it is uncertain to what extent 'best practices' can and will be replicated. For instance, the child labour project in India and Bangladesh developed various tools and presented their key lessons learned to members, but this does not guarantee widespread uptake. Companies interviewed suggested few lessons learned for their individual situation and other areas. In the gold agreement, companies suggested that they support the idea of the collective project in Uganda, but feel far removed from project implementation. They were also not aware of concrete lessons learned by the project.

Different interviewees therefore criticised the small-scale setup of projects, especially in view of the large number of signatory companies, and stressed that more companies needed to be part of projects in order to increase the potential for impact. However, there seems to be limited corporate interest because projects are not necessarily based on companies' priorities resulting from their due diligence processes and annual action plans. In gold and textile, projects were started because of a concrete funding opportunity at RVO and are considered to be driven by NGOs' interests (see also Rutten & Oudendijk, 2019). This does not imply that the issues addressed are not relevant to companies, but are rather not perceived as company priorities. In the case of the child labour project in the textile sector in Bangladesh, companies interviewed explicitly criticised that it is driven by UNICEF's approach to child labour, which does not match the interests of participating companies. Overall, company representatives suggested that it was difficult to steer projects according to their needs, as NGOs already had their plans set and activities running, whereas NGOs referred to their local expertise as guiding in theme selection. At the same time, the mid-term review of the garments and textile agreement highlighted that there is a risk that 'non-applicability' of the theme/topic/location of a collective project is used by companies as an excuse to not participate in collective projects (Rutten & Oudendijk, 2019).

In the textile sector, it was also noted that some companies already work on projects in other initiatives (e.g. in the Fair Wear Foundation) and have limited resources to spend. Even if companies are not part of any project, resource constraints may impede them from joining forces. In both the agreement on banking and garments and textile, companies argued that high reporting requirements take up considerable resources and prevent a further focus on impact (see also Dutch Banking Sector Agreement, 2019b; Rutten & Oudendijk, 2019). One interviewee considered this to be a critical trade-off: having thorough due diligence requirements on the one hand and working on impact on the other.

The food products' project is different in this regard. According to self-reporting in the baseline monitoring, participating supermarkets were already well experienced in due diligence prior to the start of the project. The chosen crop—bananas—is seen as a priority in terms of sales volume and RBC risks. Therefore, all main supermarket chains in the Netherlands participate in the project. Commitment is further strengthened because the project promises measurable outcomes which can also easily be communicated to stakeholders.

Another example of a project emerging from insights gained through due diligence is the collaboration between two companies in the garment and textile agreement on living wages in one of their joint supplier factories (although not a collective project in the sense of the projects mentioned above). Here companies have recognised a need (i.e. poor wages) and an opportunity (i.e. overlap in supplier and support provided by IDH) to start a collaboration based on intrinsic company motivation.

In the metals agreement, no collective projects have been initiated so far. The parties agreed that collective projects should follow from the insights obtained through individual and so-called collective due diligence exercises, which means companies should have due diligence systems in place before collective projects can be initiated. Among the sector, there is so far also limited willingness to engage in collective projects in view of limited expected relevance and efficiency of projects amidst limited financial resources.

The above suggests that only a limited number of companies, often sector frontrunners, are interested in joining collective projects that address issues which do not derive out of their due diligence processes. This could indicate that companies' willingness to participate increases if projects address risks and adverse impacts which also occur in their own supply chain. Yet, alignment by itself does not guarantee company participation in view of competing demands on (limited) resources, as also evidenced by the limited number of companies that actively participate in collective projects. This holds particularly, but not exclusively, for small companies. Project participation is grounded in a variety of motivations and relevance to companies does not solely derive from risks identified in their supply chain.

6.6 To what extent does the knowledge and expertise of the parties align with the prioritised negative impacts by companies?

This question relates to the effectiveness of the composition of the parties as relating to the focus/aims/themes to be addressed by RBC agreements. It should be noted that not all agreements have 'prioritised negative impacts' and in other cases priorities are set (themes, sectors) that are not necessarily perceived by all as 'the negative impacts to be prioritised' (e.g. in the gold agreement companies argue in favour of increased attention to innovations in the downstream part of the chain compared to NGOs that focus on conditions at mining level).

Seeing the critical participation of NGOs during the negotiation phase of RBC agreements and during their implementation, we focus on the expertise of the involved NGOs. They are the parties considered to have the greatest expertise on negative impacts in supply chains, as they work in production locations through projects and have networks of local partner organisations.

With the exception of coal, participation of NGOs in RBC agreements is largely shaped by their willingness and capacity to join as well as relevant expertise on RBC. Within the scope of the Dutch NGO landscape, there are inevitable limitations in this regard. Willingness is often associated with the campaigning status of NGOs and a number of advocacy NGOs either left RBC agreement negotiations or did not want to join in the first place.

Relevant NGO expertise is not distributed equally across sectors. Several sectors reported that only a few NGOs work on sector-relevant topics. For example, while there seem to be sufficient NGOs with forest

expertise, for natural stones, metals and floriculture—all agreements concluded in 2019—there is a notable shortage of NGOs with sector-specific expertise.

Interview respondents, particularly from companies and sector associations, pointed to the single orientation of many NGOs in RBC agreements. Expertise on social themes, such as human rights and children's rights in developing countries, is present in most RBC agreements, whereas this is not necessarily the case with environmental issues. A shortage of expertise on circular economy was specifically observed for NGOs. Private sector respondents from the food products and gold agreements further indicated that participating NGOs have insufficient trade expertise on global value chains. In the case of the food products agreement, the perceived expertise shortage is also grounded in the fact that six NGOs exited the agreement negotiations, which has also led to a loss of expertise. In the gold agreement, sector stakeholders stated in interviews that a lot of attention goes to conditions in gold mining, which they consider difficult to change with a Dutch RBC agreement. They argued that a focus on innovations could be more successful, e.g. extracting gold from e-waste, innovations in recycled gold certification or use of new technology in tracking supply chains. Yet, parties claimed that the NGOs' expertise does not cover the downstream part of the chain.

Expertise also pertains to country-specific knowledge. This was noted specifically for the agreement on garments and textile—where China and Turkey are the most important production countries for Dutch brands, but where participating NGOs focus particularly on India and Southeast Asia.

Moreover, even when NGOs with sufficient relevant expertise are available, participation in RBC agreements is resource-intensive. Among others, participation is required or expected in an agreement's steering group, different working groups, theme-specific workshops and seminars, and collective projects. In the gold agreement, the only environmental NGO, the International Union for Conservation of Nature (IUCN), decided to leave the agreement on the basis of reprioritisation and efficient use of capacity. A considerable number of NGOs also participate in more than one RBC agreement, which places constraints on their efforts to make a meaningful contribution to an agreement. Most NGOs take their role seriously and are already struggling to find enough time and staff to input in the agreements. They are thus stretched in their resources across different agreements. Many interviewees (including NGOs themselves) report they struggle with the 'watch dog' versus 'constructive partner' role they have in the agreements. Some NGOs also perceive that they have to 'monitor' progress in lieu of the Government.

For RBC agreements, having only a few or relatively similar NGOs poses a risk that expertise does not match prioritised impacts or that focus is steered to match expertise, irrespective of the priority of impacts. This risk emphasises the importance of having a support network that RBC agreements can otherwise resort to, in case of missing NGO expertise. Many RBC agreements list so-called 'support parties' and particularly the agreement on garments and textile has managed to attract formal support from a wide range of organisations (NGOs, multi-stakeholder initiatives, expertise centres, etc.). Especially the scale-up to existing initiatives could be a promising way forward to bring together scattered expertise and thus create alignment with companies' risk priorities (OECD, 2020).

A similar role was envisaged for NGOs under the coal agreement. Instead of joining the agreement, NGOs were invited to annual meetings where companies' progress was presented. However, this approach has attracted wide-spread criticism from these NGOs for failing to engender a multi-stakeholder dialogue upon which progress could be based.

Finally, it needs to be acknowledged that RBC agreements do not include any local organisations as members. While participating NGOs (and unions) have local partner networks in some locations and have context-specific expertise, this is largely a substitution of representation. NGOs interviewed specifically emphasised the importance of local organisations in helping companies to address risks and monitor the results of efforts.

6.7 To what extent do the RBC agreements offer a solution for problems companies cannot solve on their own?

One of the assumptions of RBC agreements is that they offer companies, together with other partners, the opportunity to increase their leverage to tackle risks of negative effects in supply chains (SER, 2014). Observations at this stage are limited in view of the scarce evidence for concrete impact in producing countries, where most RBC risks manifest. The following can, however, be noted.

1. Within their respective constraints of reach and market coverage (see Chapter 4), RBC agreements have increased the level playing field on RBC within the Netherlands. Whereas prior to agreements, only a number of frontrunner, usually large, companies have engaged in due diligence, positive signs of progress in the agreements on banking, garments and textile and, to a lesser extent, gold, suggest an acceleration effect as a result of the RBC agreements. The concrete alignment efforts of the agreement on garments and textile with the PST and SAC have potential for an increased level playing field beyond the Netherlands.

2. RBC agreements can increase the level of transparency in international supply chains, giving insights on where Dutch companies source from. This is most notable for the agreement on garments and textile where more than 5,800 different production sites of signatory brands have been disclosed and linked to the Open Apparel Registry. The TruStone agreement has similar ambitions of disclosing production sites. The banana project in the food products agreement also shows that it is possible to collaborate, to trace ingredients to production locations and to identify labour rights violations—even if there is not a pre-existing contractual relationship between the company and the relevant actors upstream in the supply chain.

3. The RBC agreements further offer a setting where collaboration between companies and other stakeholders, especially NGOs and unions, can emerge to start concrete activities aimed at addressing risks in production locations. This refers to the idea of collaborative governance (or partnerships) as a pragmatic response to the inability of individual actors to solve complex problems—by alleviating individual weaknesses and increasing the effectiveness of each actor's efforts. While this has happened to some extent, evidence of collective projects' impact is limited, especially with regard to addressing complex problems. The banana project in the food products agreement seems to have the most potential for large-scale and measurable impact, should it indeed manage to close the living wage gap by at least 75% by 2025 on plantations where bananas for the Dutch market are sourced.

4. The food products project is also the only project where the demand side of all supermarket chains active on the Dutch market is combined, which has an important connotation for leverage. In other sectors, the (actual or perceived) limited leverage of Dutch agreement-participants was repeatedly mentioned by interviewees as a key barrier to collectively resolving complex problems. For example, in the floriculture agreement, interviewed stakeholders did not believe that signatory companies could implement living wages in floriculture supply chains in view of strong competition in the sector and companies' (alleged) inability to raise prices with their customers, such as retailers. As only one retailer is currently part of the floriculture agreement, this creates a collective action problem grounded in price competition for participating companies. As such, participating parties also stated that the added value of the agreement is not yet clear. In the agreement on garments and textile, collective demand side leverage vis-à-vis suppliers is limited by the fact that there is only little overlap discovered so far in supplier locations. Around 7.5% of disclosed locations supply to two or more signatory brands at the same time. It is expected that this percentage will increase as brands disclose more suppliers deeper in the supply chain (e.g. spinning mills).

5. Competition law and issues of client confidentiality influence companies' ability to join forces on complex issues (IOB, 2019). All agreements contain confidentiality protocols to ensure competition law

and privacy regulations, as enforced by the Authority for Consumers and Markets (ACM), are adhered to. This influences RBC agreements and has been perceived as a barrier for implementation. For instance, in the coal agreement, the ACM concluded that energy companies were not allowed to agree on sharing detailed information on their suppliers, but instead needed to charge a third party to collect aggregated data not linked to individual companies. This stance was not undisputed and NGOs considered this to be an excuse for not doing more on transparency, especially as one energy company started publishing its suppliers nonetheless (SOMO & OECD Watch, 2014; SOMO, 2017). Also for other agreements, competition law and the stance by the ACM has led to uncertainty. For example, the banking agreement's monitoring committee stated that "adhering banks experience difficulties in the DBA due to competition law. They are still hesitant to exchange their approach to human rights due diligence, even though it is unclear how exactly these exchanges would eventually limit competition. This means that the ACM guidance on the boundaries of competition law does not provide sufficient guidance" (Dutch Banking Sector Agreement, 2019). The monitoring committee therefore urged the Government to clarify the legal possibilities for cooperation and exchange of information within sectors. The current bill 'Space for Sustainability' (Ruimte voor Duurzaamheid) connects to this aspiration, as it aims to ensure that the Government can more readily pave way for collaboration between competitor companies.

6. Despite the attempts to remove competitive elements from RBC agreements, companies' commercial interests may still affect the outcome and impact of RBC agreements. IOB (2019, p. 76) draws attention to the fact that transparency often conflicts with commercial interests as many companies derive part of their competitive advantage from their value chain: information about suppliers is valuable to competitors. The tension between cooperation and competition has long been recognised in the scientific literature, where studies argue that higher levels of competition (between companies) tend to harm the social or environmental outcomes of a collaborative initiative (e.g. Oxley & Sampson, 2004; Hahn & Pinkse, 2014; Stadler, 2018). However, it is not only participating companies that have commercial interests. Their suppliers may also be reluctant, for commercial reasons, to disclose detailed information about their own supply chains, which represents a challenge in mapping supply chains and identifying risks in the first place.

7. Various respondents from all RBC agreements pointed to the limited leverage of Dutch companies in global supply chains. For example in the metals sector, interviewed companies indicated that the signatory companies, either alone or together, have limited leverage to change the very multi-dimensional problems on the ground. An example given was the scrap industry in Ghana where working conditions are poor and child labour is reported to be common. According to the companies this problem is only contributed to by Dutch metals companies to a very small extent. They argued that solving this problem would require a solution on a far bigger scale, involving the European association for scrap traders, diplomacy and large project budgets. At the same time, companies seem to be inclined to underestimate their leverage and do not seem to be sufficiently aware or in support of the different opportunities to build leverage through an RBC agreement.

8. Overall, this suggests that the ability of RBC agreements to address complex problems remains challenging. This requires scaling and collaboration with other initiatives, particularly for the due diligence steps of addressing risks, tracking and measuring results, reporting and providing access to remedy. From a demand side perspective, the engagement of the agreement on garments and textile with the PST and other initiatives is promising. This also holds for their lobbying at the European and OECD level for an increased level playing field on due diligence. With regard to addressing complex issues in producing countries, the IOB evaluation showed that leverage on supply side actors is increased by linking the activities of RBC agreements to concrete Embassy programmes on RBC (e.g. as found in Bangladesh and Colombia) and other national or international sector initiatives (Newton et al., 2019; Quintero et al., 2019). Even within these considerations, it remains important to also acknowledge that RBC agreements cannot deliver positive impact on all RBC risks in their respective sectors—which requires careful and justifiable prioritisation of risks to be addressed.

9. Finally, tracing the impact of RBC agreements on the ground warrants close attention in the future. While acknowledging the diversity of reporting across RBC agreements, both in terms of quantity and quality, this requires that RBC agreements report on concrete results achieved to a greater extent than at present.

Chapter 7



7 Costs, efficiency and financial sustainability of RBC agreements

7.1 Key findings

- ❖ The average direct implementation costs is €1.48 million per agreement and €84,472 per signatory (or adhering) company.. This excludes the time investments by the signatories and the investments in due diligence made by companies.
- ❖ There is high variation in the RBC agreements' implementation costs. This large variation—even though it partially stems from sector specific characteristics and the context in which each sector operates—suggests that the optimal scope of the agreements, and thus the efficiency, can be improved.
- ❖ Agreements involving fewer and smaller companies (e.g. floriculture and metals) are less efficient than agreements with more and larger companies (e.g. garments and textile, banking, insurance and pension funds), as a result of high start-up costs and high fixed costs of managing the implementation by a secretariat.
- ❖ The Government is the key funder of the RBC agreements. With the exception of banking—which is predominantly financed by the private sector—the Ministry of Foreign Affairs is directly contributing between 47% and 92% to the agreements' implementation costs. Additionally, the Government is indirectly funding the RBC agreements via sizeable subsidies to, for example, secretariats, NGOs and collective projects.
- ❖ It is unlikely the RBC agreements will become fully independent of public funds if they continue beyond the current set end dates. Companies, and/or sector associations, seem to be unwilling and unable to contribute more than they are currently doing and, so far, the agreements have not been successful in attracting more (paying) signatory companies.
- ❖ Financial sustainability should not necessarily be a target of the RBC agreements. The Government can reasonably be expected to contribute more if the agreement contributes more to public goods.

7.2 Costs and financing

The international RBC agreements are jointly funded by the public and private sectors. Table 25 provides an overview of the financial contributions of the Ministry of Foreign Affairs (MoFA), the SER and the private sector (companies and/or sector associations) to the different RBC agreements, based on data received by the Ministry and the RBC agreements. This does not include contributions in kind (predominantly signatories' staff time) as this information is not available.

This does also not include out-of-pocket expenses by signatories that are not included in the internal accounting of the RBC agreements. This is particularly relevant for the coal agreement and the food products agreement, as these do not keep an internal accounting of the budget. For the coal agreement, which had no secretariat, this meant that all costs were directly incurred by the participants. For the food products agreement, it was agreed that the Ministry of Foreign Affairs and the SER fund the secretariat, while the sector associations pay for the monitoring costs, mid-term review, stakeholder meetings, and any expenses related to fulfilling their further commitments. It is not clear what the total size of these out-

of-pocket expense by the private sector were for coal and food products.⁵⁶ For the other agreements, there is no indication for substantial out-of-pocket expenses by the private sector, other than time investments and the costs incurred for the implementation of due diligence.

The total implementation costs of the nine RBC agreements for which we have access to the internal budget add up to about €13.3 million (Table 23). This means the average implementation costs of an RBC agreement is €1.48 million. There is, however, large variation in the size of the total budgets between agreements. The garments and textile agreement has, by far, the highest budget: €5,087,646 for the five year period. The forestry agreement has the lowest budget: €399,156 for nearly four years.

The SER finances 20% of the total budget for all agreements it supports (thus excluding the floriculture and forestry agreements). The share of Ministry funding varies from 10% to 73% per agreement. The Ministry of Foreign Affairs and SER, together, pay the largest share for all agreements, with the exception of Forestry and Banking. For forestry, the contributions of the private sector signatories (i.e. sector associations) more or less equal the Ministry's contributions. The banking agreement is the only agreement which is largely paid for by the private sector (ca. 70%).

A multiplication factor⁵⁷ has been calculated to assess the level of signatories' financial contributions (SER and private sector combined) for every euro invested by the Ministry of Foreign Affairs. For the banking agreement, this is €9. For the forestry, insurance, pension funds, and TruStone agreements, the other signatories have invested slightly more than €1 for every euro invested by the Ministry. For the other sectors (floriculture, garments and textile, gold, and metals), the multiplication factor is between 0 and 1, meaning that the sector investments were lower than the Ministry's investments.

Considering the average annual contributions of the Ministry of Foreign Affairs, the investments are highest in the garments and textile agreement (€702,236 per year), and lowest in the banking agreement (€50,554 per year). The Ministry's annual contributions to the other RBC agreements vary between €64,846 and €159,982 per year. The Ministry of Foreign Affairs is thus an important funder of the RBC Agreements.

⁵⁶ For food products, sector association FNLI, for example, estimated the costs it had incurred for the two years since signing the agreement (July 2018 – June 2020) at €300,000, which includes €50,000 out-of-pocket expenses (e.g. workshops and reporting) and €250,000 in kind expenses in terms of staff time. They indicate that about €150,000 of in-kind costs is additional to what would have otherwise been invested on RBC. The other big sector association in the food products agreement, CBL, together with IDH, has invested €152,000 in the first two years of implementation of the collective project on living wages on banana plantations.

⁵⁷ Formula used: multiplication factor = (1-MoFA share)/MoFA share

Table 25. Total financial contributions (€) for the RBC agreements

RBC Agreement	MoFA contribution	SER contribution	Private sector contribution ^a	No. of signatory companies	Total income	MoFA share (%)	Multiplication factor (per €1 of MoFA)	Average annual contribution by MoFA
Banking ^d	151,664	289,419	1,006,014	9	1,447,098	10%	9	50,554
Floriculture	479,947	0	227,250	9	707,197	68%	0.47	159,982
Forestry	194,538	0	204,618	0	399,156	49%	1.05	64,846
Garments & textile	3,511,179	1,017,529	558,938	68	5,087,646	69%	0.45	702,236
Gold	532,000	133,000	60,000 ^b	12	725,000	73%	0.36	106,400
Insurance	457,495	194,679	321,220	171	973,393	47%	1.13	91,499
Metals	716,632	273,533	377,500	7	1,367,665	52%	0.91	143,326
Pension funds	592,114	251,963	415,740	81	1,259,817	47%	1.13	118,423
TruStone ^c	635,828	270,565	446,432	16	1,352,825	47%	1.13	127,166

^a Financial contributions from private sector signatories (companies and/or branch organisations). ^b Private sector contribution includes NGO contribution. ^c Dutch contributions only. ^d This excludes monitoring costs made after the ending of the banking agreement.

Source: MoFA internal documents

In addition to the direct contributions to the RBC agreements, the Ministry is supporting collective projects and financing NGOs participating in RBC agreements through the fund 'Fonds Verantwoord Ondernemen' (with a budget of €7.87 million for 2020) and is financially supporting companies to address the potential use of child labour in their supply chains via the Fund Against Child Labour (with a budget of €5.5 million for 2020). Both these funds are managed by RVO (also see Box 14).

Box 14. Fonds Verantwoord Ondernemen

Fonds Verantwoord ondernemen (FVO) is managed by RVO, and provides support for international RBC projects in two different ways: Pillar 1 and Pillar 2.

Pillar 1 supports partnerships between companies and CSOs. FVO aims to set up multi-stakeholder projects to identify and address RBC risks or misconduct in international value chains. The FVO fund provides subsidies up to 70% of the real costs (maximum €475,000 per project) during 2019-2022. In 2020, a total amount of €4.87 million has been made available.

Pillar 2 supports CSOs that are involved in international RBC agreements. Funding is provided for 'basic activities' such as attending meetings and working group involvement, as well as for 'extra activities' agreed within the international RBC agreement. The maximum amount per grantee is €150,000 per year for basic activities, and the same amount for extra activities. In 2020, a total amount of €3 million has been made available.

7.3 Expenditures

The RBC agreements also vary in their expenditures (Table 26). The largest part of the budget is spent on the personnel costs and activities (e.g. meetings, communication) of the secretariats. Two main types of joint deliverables can be distinguished: development of due diligence instruments and working group outputs. Some RBC agreements include budgets for the development of due diligence instruments, which include expenses on external expertise, the development of a database / monitoring tool and monitoring

costs. Other RBC agreements have budgets for specific collective projects that are implemented by working groups, ranging from commissioned studies on particular topics to developing a communication strategy including RBC communication materials. In some cases, outputs of the working groups resulted in project proposals for which additional grants have been obtained from RVO (e.g. the FVO fund, see Box 14). These additional outputs have not been included in the expenditure overview.

The majority of the budget (at least 64%) is used for the management of the international RBC agreements (secretariat personnel costs, meetings, internal communication). The budgets for the joint deliverables are significantly smaller, but in-kind contributions (e.g. staff time) invested in the joint deliverables are not taken into account.

Table 26. Total expenditures (€) of the RBC agreements

RBC Agreement	Management costs (€)	Management (% of budget)	Working groups (€)	Working groups (% of budget)	Due diligence instruments (€)	DD instruments (% of budget)	Duration (years)
Banking	777,947	57%	669,151	43%		0%	5
Floriculture	468,877	66%		0%	238,320	34%	3
Forestry	226,150	64%	128,124	36%		0%	3
Garments & textile	4,404,310	87%			683,336	13%	5
Gold	133,000 ^b	92%	12,000	8%		0%	5
Insurance	690,797	71%		0%	282,596	29%	5
Metals	945,160	73%	77,500	13%	174,300	14%	5
Pension funds	1,006,742	80%		0%	253,076	20%	4
TruStone ^c	1,751,974	88%	30,250	2%	218,768	11%	5

^a Secretariat costs incomplete (personnel costs missing). ^b 2019/2020 budget only. ^c Dutch budget only

7.4 Efficiency

There is insufficient information to fully assess the efficiency of the RBC agreements.⁵⁸ This is particularly because we have no representative and quantitative information on the benefits (effects) of the RBC agreements (see Chapters 0 and 6). Moreover, with the exception of the banking and coal agreements, the RBC agreements are still being implemented. Some agreements have just been initiated less than one year ago and efficiency cannot yet be assessed.

However, we see high variation in the inputs used (total budget), which is explained by the different ways in which the RBC agreements are implemented. The garments and textile agreement has, by far, the highest budget, but also has comparatively more detailed requirements regarding due diligence, transparency, and accountability, which requires a more elaborate reporting and monitoring structure and more coordination. In addition, the garments and textile agreement has a comparatively larger range of activities that are implemented (workshops, tool development, international outreach). The coal agreement, on the other end of the spectrum, had a much smaller scope with fewer detailed requirements

⁵⁸ Assessing efficiency involves investigating how resources (inputs) and the way they are applied are converted to direct results (outputs). In evaluating efficiency both the quantity and quality of the outputs are important (IOB, 2016). This depends on the outcomes that are achieved as a result.

and fewer joint activities. This large variation—even though it partially stems from sector specific characteristics and the context in which each sector operates—suggests there is scope for improvements in finding the optimal scope of the agreements, and thus for efficiency improvements.

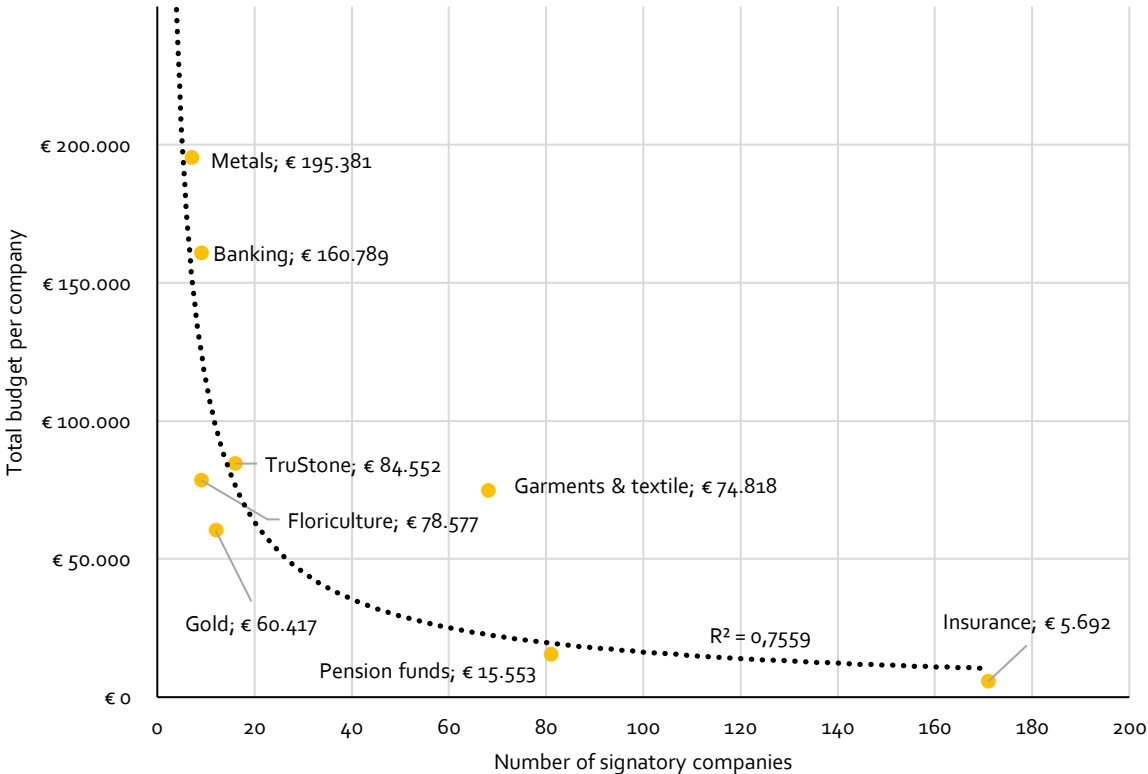


Figure 8. Total budget per signatory company against number of signatory companies

Source: own calculation

We also see that there is high variation in the RBC agreements’ size. Efficiency depends on how many companies adhere to the agreement as a result of high start-up costs and high fixed costs of running an agreement (e.g. the costs of a secretariat). This is illustrated by Figure 8 above, which shows how the costs per company decrease with the number of signatories/adhering companies. While the direct implementation costs budgeted for insurance are as low as €5,692 per adhering company, the budgeted costs for the metals agreement—not taking into account its growth ambitions—is as high as €195,381. The average implementation costs per signatory (or adhering) company are €84,472.

We can thus expect agreements involving fewer and smaller companies (e.g. floriculture and metals) to be less efficient (*ceteris paribus*) than agreements with more and larger companies (e.g. insurance and pension funds). It is unclear whether the number of companies willing to sign the agreement is a criteria for deciding whether or not to start the implementation. It is also unclear to what extent the optimal scope of an agreement, from an efficiency perspective, is considered in the negotiations. For example, the value chains of companies in the metal, gold, electronics, and wind energy sectors might have sufficient overlap to form one bigger (and potentially more efficient) agreement.

7.5 Financial sustainability

The Ministry of Foreign Affairs is the key funder of the RBC agreements. With the exception of banking, the Ministry is contributing between 47% and 92% to the budgets for implementation of the agreements. Additionally, the Government is indirectly subsidising the RBC agreements via subsidies to, for example,

the SER, NGOs, and companies. This raises questions regarding financial sustainability: can we expect the RBC agreements to continue functioning with much less public funding? In answering this question, we offer four key considerations.

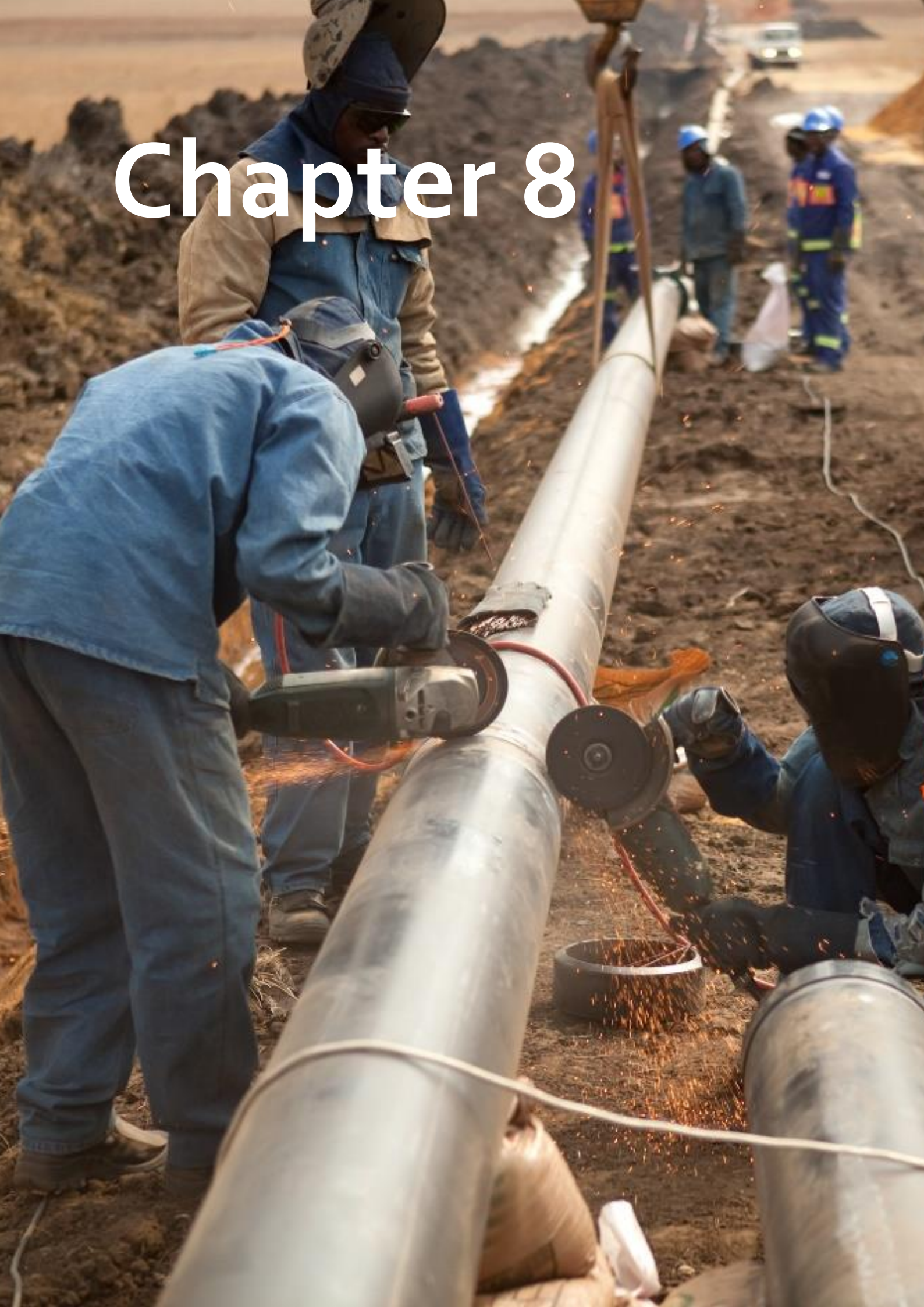
First, following the outcome of negotiations, which included—typically long and hard—bargaining on financial contributions, it is clear that there is limited scope for further financial contributions by private companies. Companies already incur the costs of due diligence implementation and consider the time investments required as large, which results in limited willingness and/or ability to contribute much more to the budgets of the agreements.

Second, one way to increase the budget share covered by the private sector is increasing the number of signatory companies. In this way, the fixed costs of running an agreement (e.g. the secretariat) can be shared by a larger group of companies, making additional contributions by the Government less of a necessity. So far, most agreements have, however, not proved to be successful in upscaling (see Chapter 4).

Third, we need to distinguish the one-time costs of setting up the agreements, including the costs of negotiation, and the development of tools, such as due diligence support tools and monitoring frameworks, and the costs of continuing the agreements, such as continued reporting requirements, meetings, and project implementation. As these one-time costs do not return (or to a lower extent, e.g. when revising the assessment framework), we could expect that running these agreements will become less expensive over time (assuming no broadening of scope).

Finally, it should be considered to what extent it is reasonable to expect private parties to fully fund the RBC agreements. It is true that companies in particular benefit from the support structure provided by the RBC agreements (e.g. knowledge sessions, studies on RBC risks, and due diligence tools)—support they otherwise would have to acquire by themselves. However, it is intended that the RBC agreements also result in public goods, which could include improved access to grievance mechanisms, a platform where the Government and CSOs can hold companies accountable in case of misconduct, and lower adverse impacts on human rights and the environment. Companies' willingness to cover the full expenses to create these public goods is limited, also as the OECD Guidelines refer to company responsibility and not (legal) liability.

Chapter 8



8 High-risk sectors without an RBC agreement

8.1 Key findings

- ❖ A number of important high-risk sectors, as identified by KPMG (2014), did not sign an RBC agreement or have important sub-sectors that are yet not covered by an agreement. Important high-risk sectors without an RBC agreement include electronics, oil and gas, and chemicals.
- ❖ The sector associations representing these three sectors were approached by the Ministry of Foreign Affairs to discuss the possibilities for an RBC agreement but none of them decided to initiate negotiations for coming to an agreement.
- ❖ Common underlying factors of why these sectors did not come to an agreement include: 1) lack of perceived added value of an RBC agreement compared to existing initiatives or legislation; 2) limited mandates of sector associations and difficulties in representing their respective member companies in the negotiation of an RBC agreement; 3) the claim that large companies already adhered to high standards regarding (environmental and health) impacts on surrounding communities and worker safety; 4) the preference for a European or global initiative instead of a Dutch initiative; and 5) limited public pressure in the case of the chemical and electronics sectors.
- ❖ No evidence was found for substantive progress on RBC and due diligence in either of the three investigated sectors without an RBC agreement. It is noticeable that the sectors, through their sector associations, do not report much or at all on RBC of their member companies. Communication can be found on sector-wide issues, such as climate change, but reporting on risks in supply chains does not take place.
- ❖ At a company level, large international or internationally-oriented companies generally have RBC policies in place and communicate publicly about them. The extent to which RBC policies follow a systemic approach to due diligence in line with the OECD Guidelines and are implemented in company operations, remains unclear. Smaller companies are typically not considered as following RBC policies/practices.

8.2 Introduction

Chapter 4 of this evaluation showed that several important high-risk sectors, as identified by KPMG (2014), are either not covered by an RBC agreement, such as the oil and gas sector and the chemical sector, or have important sub-sectors that are still missing, such as electronics, construction and agriculture (for the latter, an RBC agreement is currently under negotiation). Following the ToR, this section analyses the reasons behind the lack of an RBC agreement in three sectors: oil and gas, the chemical industry, and the electronics industry (Chapter 8.3).⁵⁹ In addition, this section offers an update on the current state of affairs in these three sectors regarding the implementation of due diligence according to the OECD Guidelines (Chapter 8.4).

⁵⁹ For an analysis of the reasons for the lack of an RBC agreement in the construction sector, see Vernes (2018).

8.3 Why did some sectors not come to an RBC agreement?

All three sectors—oil and gas, chemicals and electronics—were identified as high risk sectors by the KPMG assessment in 2014 and were, accordingly, approached by the Ministry of Foreign Affairs to discuss the possibilities for an RBC agreement.

Discussions with the sector association of the technical sector (which includes electronics), FME, for example, started in 2014. In 2016/17, FME conducted a scoping exercise to investigate the necessity of an RBC agreement and possible support by its members (Kamerstuk 26485-220, 2016). At the end of 2017, FME concluded that an RBC agreement would be a suitable instrument for homogenous sectors, but does not do justice to the complexity of the electronics sector and high diversity of companies (Veeneman & Bos, 2018).

The Royal Association of the Dutch Chemical Industry (VNCI) started a similar process in 2015. VNCI investigated existing RBC initiatives and assessed whether they sufficiently addressed the risks identified by KPMG or whether an RBC agreement would be needed (The RockGroup, 2016). The commissioned study confirmed that existing legislation (e.g. EU REACH) and sector-wide initiatives (Responsible Care; Green Deals) covered many environmental and safety-related RBC risks in the chemical sector. However, it also highlighted that investments in due diligence according to the OECD Guidelines could address the remaining RBC risks in the supply chain (The RockGroup, 2016). Notwithstanding the identified gap in sector-wide due diligence, sector stakeholders did not support the idea of negotiating an RBC Agreement in view of ongoing initiatives, reported capacity constraints, and scepticism of the value of a multi-stakeholder approach (The RockGroup, 2016). As such, VNCI concluded in January 2017 that there was no need for a new initiative. The VNCI specifically considered the sector's global Responsible Care programme as well suited to advance the discussion on due diligence. Since all VNCI members have committed to this programme (obligatory since 2003), it was considered the best placed vehicle to bring the OECD Guidelines to the attention of companies.

Similarly, after a series of discussions with the Ministry of Foreign Affairs starting in late 2014, the oil and gas sector communicated in mid-2016 that they did not see the added value of an RBC agreement. They argued that the sector was already highly regulated, international RBC risks were already addressed at an individual company level, and existing initiatives at an international level can be drawn upon to further develop companies' due diligence systems (Kamerstuk 26485-220, 2016).

Thus, all three sectors, through their sector associations, engaged in a series of discussions with the Ministry, but ultimately concluded that an RBC agreement would neither add significant value nor attract the interest of member companies. When looking at the detailed reasons of why none of the sectors had sufficient incentives to negotiate an RBC agreement, we observe five main factors: (1) lack of perceived added value of an RBC agreement compared to existing initiatives or legislation; (2) limited mandates of sector associations and difficulties in representing their respective member companies in negotiating an international RBC agreement; (3) claims that large companies already had due diligence systems in place; (4) preference to discuss due diligence compliance not at a Dutch level, but rather at a European or even international level; and (5) limited public pressure in the case of the chemical and electronics sectors.

First, in the absence of proven policy effectiveness, all three sectors raised *concerns about the need for—and added value of—an RBC agreement*. This was most pronounced in the chemical sector. Here the OECD Guidelines were considered in the broader sustainability context, which, in turn, was already perceived to be a major topic since “companies need to adhere strict environmental, health and safety regulations” (Roelofs et al., 2015). The sector is strongly regulated at national and international level—particularly through the EU's REACH regulation, which requires manufacturers and importers to provide safety information on chemical substances. Moreover, the Dutch chemical sector has been a long-time participant in the global Responsible Care programme, which started in 1985 and is implemented in 67

countries. VNCI adopted the Responsible Care Global Charter from the International Council of Chemical Association and has since made it mandatory for member companies to participate in this programme. While VNCI recognised that the OECD Guidelines go beyond existing legislation and voluntary initiatives, they argued that the scope of the OECD Guidelines was too limited to warrant a completely new initiative, also in view of associated costs. Instead, they favoured the integration of the OECD Guidelines into the Responsible Care programme. This also reveals a general mismatch between what an RBC agreement entailed—a multi-stakeholder approach with civil society organisations on supply chain risks—and what the sector was interested in—sustainability innovations from a cost savings or business continuity perspective (Roeloffs et al., 2015; The RockGroup, 2016). As a result, the Ministry of Foreign Affairs was largely the only actor with an expressed interest in an RBC agreement in the chemical sector (The RockGroup, 2016).

The oil and gas sector also referred to its long-term exposure and adherence to stringent environmental and safety regulation in the Netherlands and other developed countries. These regulations cover aspects such as environmental impact through leakage, safety of workers, and potential health risks on communities surrounding their operations. Interview respondents argued that regulations are so strict that even smaller companies have high standards in terms of environmental safety, working conditions, labour rights, and the impact on surrounding communities. RBC in this regard was already considered to be at the core of the business model of many of the sector's companies. This was also because of high financial and reputational costs of corporate misconduct.

Furthermore, respondents suggested that multinational oil companies had little incentive to join a Dutch-based initiative. The membership of VOTOB (Dutch Tank Storage Association), VNPI (Dutch Petroleum Industry Association), and NOGEPA (Netherlands Oil and Gas Exploration and Production Association) consists exclusively of large multinational companies that are active in numerous countries. Sector associations therefore conceded that it did not make much sense for these companies to join an agreement that is confined to companies active in the Netherlands.

In electronics, the sector association FME did see the added value of an RBC agreement approach. However, it was not able to create sufficient support from its member base and other relevant sector associations. The sector associations for IT companies (NLDigital) and producers, importers and retailers of audio-visual equipment were approached by the Dutch Government, but both associations did not see the relevance of an RBC agreement. They argued that they could not influence companies facing RBC risks related to the production of consumer electronics, as RBC policies of these companies are formulated at headquarters abroad. Indeed, an important share of the companies active in the Dutch electronics sector are subsidiaries of multinationals that showed little interest in a Dutch-based agreement.

Second, the sector associations in all three sectors pointed at *limited mandates and difficulties in representing* their respective member companies in the negotiation of an international RBC agreement. In the electronics sector, FME argued that having one RBC agreement for the entire technological industry was not feasible in view of the large number of member companies, the different contexts in which these companies operate and the different raw materials used. An RBC agreement was therefore considered as too complex, too intensive and too ambitious for such a large and diverse sector (Veeneman & Bos, 2018). A sub-branch of FME, VNMI (Dutch Metallurgical Industries Association), representing a more homogeneous group of metallurgic companies, however, did decide to initiate negotiations for an RBC agreement, which resulted in the agreement for the metal sector. FME instead started an awareness raising campaign on RBC (Veeneman & Bos, 2018) and is also an official supporting party to the metals agreement.

Questions about sector scope were similarly present in the oil and gas sector. First, the sector is represented by different associations which focus on particular activities within the oil and gas value chain: oil processing, extraction of petroleum and natural gas, services for oil and gas extraction (e.g. storage),

and oil trading. Moreover, most sector associations exclusively represent those activities of their member companies that take place in the Netherlands, whereas the companies themselves are often international companies. There was thus high reluctance among sector associations to initiate negotiations on an RBC agreement because their representation activities are confined to only a small part of the sector and—often—confined to the Netherlands-based activities of their member companies. The initiation of an RBC agreement—in the eyes of the sector associations—goes beyond what these sector associations consider their role and mandate.

In the chemical sector, discussions on an RBC agreement were held with the VNCI sector association. Yet, the sector was considered broader than VNCI, including plastics, cosmetics, paints and pharmaceuticals (The RockGroup, 2016). Furthermore, the chemical sector is itself a supplier of materials and refined products that are used throughout the economy, including automotive, manufacturing and industrial operations. As such, the broad and fuzzy scope of the chemical sector diluted the urgency of the RBC agreement with VNCI.

Third, all sectors argued that especially *large international companies already engaged in due diligence*. For example, in the chemical sector, due diligence in line with the OECD Guidelines was described as common practice by large companies (The RockGroup, 2016) and it was estimated that about half of chemical companies already had an RBC policy in 2014 (Roelofs et al., 2015). Also, in the oil and gas sector and the electronics sector, the different sector associations argued that larger multinational companies, especially if they were visible to consumers, already had RBC policies in place, although not necessarily based on the OECD Guidelines (see also De Bruyn et al., 2018). In the electronics sector, two highly visible Dutch companies also already engaged in the negotiations—and later in the implementation—of the Gold Agreement, thus committing to the OECD Guidelines.

Fourthly, in view of the international character of their industries, as well as the lengthy and complicated global supply chains, all three sectors emphasised the *need for a European or even international initiative to counter RBC risks*. In the chemical sector, VNCI expressed its preference for a European rather than a Dutch initiative to take account of the international orientation of the chemical sector, both to ensure a level playing field and avoid different demands on due diligence implementation emerging in different countries. The European Chemical Industry Council (CEFIC) was explicitly mentioned as a suitable organisational level for sector-wide due diligence efforts.

Similarly, respondents from the electronics sector voiced their preference for a European initiative, although rather through EU legislation than a specific sector association in view of fragmented industry structures.

The oil and gas sector recognised that there are various RBC risks related to extraction processes. However, they argued that because most RBC risks do not emerge in the Netherlands (e.g. few risks related to the refinery or storage activities), a sector approach should start at a global level, encompassing not only companies active in the Netherlands but also other companies closer to the 'source' of RBC risks. For example, the Global Oil and Gas Industry Association for Environmental and Social Performance (IPIECA) would be better suited to address RBC risks, as it covers relevant parts of the value chain, according to VPNI (Nauta, 2019). This would also ensure that Dutch companies are not placed at a competitive disadvantage in light of an international uneven playing field.

Finally, in the case of the chemical and electronics sectors, studies and interviews conducted underscore the *low level of societal pressure* to motivate the sectors to start negotiating an RBC agreement. There was thus no need for reputational risk management to counter negative publicity. With regard to the chemical sector, in the 1970-80s, societal debates between the industry and NGOs were still commonplace. Yet, this has reduced as companies invested more in environmentally-benign or environmentally-friendly processes and products (Roelofs et al., 2015). Since its 'greenification', NGOs have tended not to focus on the chemical sector anymore—if at all, they look at feedstock processed by the sector (e.g. oil, coal, or

minerals such as mica), at specific hazardous and toxic substances or at agro-chemicals used in farming. However, there were limited linkages between NGOs' work and the chemical sector as such (The RockGroup, 2016). The sector was therefore also sceptical about the value of collaborating with NGOs, who they perceived to be single-issue focused and lacking the required expertise to talk about the chemical sector.

Also in the electronics sector, pressure on companies was still considered to be low. While attention on human rights violations in the production of minerals and components used by the electronics sector has increased, reputational risks for the electronics industry have been limited. Companies are primarily active in business-to-business markets, and there has been limited awareness both in the sector, as well as among consumers regarding the potential adverse impact of the electronics supply chain on human rights.

8.4 Is there sector progress also without an RBC agreement?

No evidence was found for *substantive* progress on RBC and due diligence in either of the three investigated sectors, apart from the individual actions of frontrunner companies. It is noticeable that the sectors, through their sector associations, do not report much or at all on RBC and due diligence of their member companies. Communication can be found on sector-wide issues, such as climate change, but reporting on risks in supply chains does not take place.

At a company level, large international or internationally-oriented companies generally have RBC policies in place and communicate publicly about them. The extent to which RBC policies follow a systemic approach to due diligence in line with the OECD Guidelines and are implemented in company operations, remains unclear. Smaller companies are typically not seen to follow RBC policies/practices.

The following sub-sections report on the findings per sector.

8.4.1 Oil and gas sector

Following a request by the Dutch parliament, then Minister Ploumen asked the National Contact Point (NCP) in October 2016 to investigate the extent to which the oil and gas sector complies with OECD Guidelines. The research report, executed by CE Delft and Arcadis, was presented in June 2018, based on a questionnaire submitted to 41 companies, including VOTOB, NOGEPa and VNPI members.^{60,61}

Based on this report, the NCP concluded that "the implementation of CSR in the oil and gas sector is deficient" (NCP, 2019, p. 5). In addition, they concluded that "there are major differences between companies, but it is clear that many have not drawn up a detailed RBC policy for dealing with specific problems in parts of the value chain. [...] In addition, companies commonly report that they have not created a complaints mechanism and have not adopted a policy on how to handle complaints when internal or external stakeholders have suffered adverse impacts" (NCP, 2019, p. 4).

Specifically, the report presented the following findings (De Bruyn et al., 2018):

⁶⁰ For the purposes of the NCP research, the Dutch oil and gas sector was defined as: all companies that are represented in the Netherlands (e.g. in the form of offices or a plant) and carry out activities in the country relating to the exploration, extraction, refining and processing, sale, trading or transportation of (fossil fuel) oil and gas products.

⁶¹ 81 companies were invited to participate in the survey. The survey excluded companies with fewer than 50 employees and companies with less than €20 million turnover; 31 companies completed the whole questionnaire (39%) and 9 companies partially completed the questionnaire (11%). The response rate for NOGEPa, VNPI, and VOTOB, was 31%, 50% and 59%, respectively. At least one or more companies in each identified sub-sector was part of the survey, with the exception of companies that exclusively run petrol stations in the Netherlands. The surveyed companies cover an estimated 79% of the annual turnover in the sector and an estimated 69% of employment. However, the report acknowledges that it may be the case that the sample is biased towards companies that have active RBC policies in place (De Bruyn et al., 2018).

1. The sector uses many activities that can be recognised as efforts to comply with the OECD Guidelines. For most of these activities, the OECD Guidelines have not been the leading framework; the question is to what extent the quantity and quality of these activities are in line with the OECD Guidelines.
2. About 54% of questionnaire respondents report that they have RBC policies in place for human rights, 75% for corruption, 78% for environment, and 91% for employment.
3. Two-thirds of these policies seem to be substantiated with concrete measures and procedures (e.g. procedure for employees and others to ask questions and complain about adverse impacts). Only 39% of respondents have an independent, external complaint mechanism.
4. 30-40% of respondents active in the oil and gas sector disclose information on their CSR policies, for example through a sustainability report. A similar percentage of companies was found to have a certified environmental management system in place with valid certification.
5. Companies perform less well on the operational steps of due diligence: tracking performance, communicating transparently and enabling remediation.
6. The 'trading' and 'distribution to consumers' segments seem to have less RBC policies in place than other segments.
7. RBC policies seem to be less common in smaller companies than in larger companies.
8. Short-term financial advantage may be given priority over long-term benefits for people, society and the environment.
9. Companies find it difficult to act according to the OECD Guidelines as long as other companies in an international context fail to do so. Companies also have difficulty taking effective joint action to improve the situation.
10. The larger companies in the sector do seem to organise themselves in international initiatives to address specific shortcomings in their individual execution of RBC principles. These initiatives can be considered a positive step towards better compliance with the OECD Guidelines. However, these international initiatives have only started recently and it is difficult to assess their effectiveness.
11. When compared internationally, companies that have their headquarter in the Netherlands comply better to the international standards of the Global Reporting Initiative (GRI) than companies in other European and Northern American countries: they produce reports more often, which adhere to the most recent guidelines in the GRI standards.

Based on this assessment, the NCP advised the Government to encourage companies to develop a joint action plan for the sector to address the need for transparency concerning RBC.

The Government adopted this advice and asked the sector to present an action plan in the first quarter of 2020. This plan should address: 1) the application of due diligence in compliance with the OECD guidelines; 2) specific actions to be taken on salient themes not covered yet adequately by the sector (i.e. human rights, transparency, and remediation); 3) specific actions to be taken to assist companies that are lagging behind (i.e. smaller companies and companies active in trade and retail); and 4) monitoring of compliance of the action plan. To date, the sector has not presented this action plan.

There are examples of larger companies organising themselves in international initiatives, particularly via IPIECA, to address shortcomings in their individual execution of RBC principles (De Bruyn et al., 2018). For example, through IPIECA, the sector is participating in the Partnership for Clean Fuels and Vehicles (PCFV) which is lobbying in African countries for stricter regulation on the sulphur content in fuel.

IPIECA is also a platform that develops, shares and promotes good practice and knowledge to help the industry to improve its environmental and social performance. It offers a large range of guidance on a wide number of topics, including an implementation guide on human rights due diligence processes (based on the UNGPs, but not the OECD Guidelines), a human rights training tool, manuals for implementing grievance mechanisms, awareness briefings on topics such as supply chain labour rights and a free and

prior consent toolbox. According to IPIECA, 79% of its member companies—all large multinational enterprises—produce sustainability reports according to IPIECA guidelines, which are based on various international guidelines, such as the UNGPs (IPIECA, 2020).

Overall, however, at the sector associations' level little evidently has happened since the KPMG report was published in 2014 and since the dialogue with the Dutch Government that began in 2014. This implies, at best, an indirect influence of the Government's RBC policy on the oil and gas sector (e.g. raising general awareness on RBC in the sector).

8.4.2 Chemical sector

VNCl states that the chemical sector aims to conduct its improvements on RBC through the global Responsible Care programme, whose pillars include process safety, working conditions, environment, transport, security, product stewardship (chain management) and public communication—each of which have indicators for VNCl members to report on based on 'continuous improvement' (VNCl, 2019a). VNCl annually reports on its progress in the Responsible Care programme, with verification by KPMG Sustainability.

VNCl indicates having taken a number of steps after the initial conversations with the Ministry of Foreign Affairs on an RBC agreement and the commissioned study in 2015/2016. For example, VNCl recognised that its stakeholder engagement could be improved and has since tried to communicate more openly to engage more stakeholders in its annual meetings. The last stakeholder meeting in 2019 was attended by around 80 participants, including stakeholders from NGOs. Member companies, too, increasingly engage with stakeholders on sustainability issues, from 36% of companies indicating to do so in 2013 to 70% in 2018 (VNCl, 2020). Furthermore, VNCl made efforts to translate Responsible Care to the Sustainable Development Goals and to determine which actions they should focus on as a sector. While these efforts were not specifically aimed at the OECD Guidelines, they were done in recognition of societal expectations of the chemical sector. There is also increasing attention to sustainability and transparency, as evidenced in moderately positive trends across most Responsible Care indicators reported by VNCl (2020), but not the OECD Guidelines themselves.

Despite a few recent updates to Responsible Care, there are continued concerns that it focuses predominantly on safety and environment of production sites (in the Netherlands), whereas risks in supply chains (especially in developing countries) and the OECD Guidelines receive only little attention (see Box 1).

Box 12. Responsible Care and due diligence

Responsible Care (RC) is the global chemical industry's initiative to contribute to the implementation of the UN's approach to international chemicals' management. The initiative was developed in response to the 1984 gas leak at a union carbide pesticide plant in Bhopal, India, and membership grew significantly in the wake of the Tianjin chemical disaster in China in 2015 (Business & Human Rights Resources Centre, 2018). The initiative commits companies and national chemical industry associations to "continuously improve the environmental, health, safety and security knowledge and performance of our technologies, processes and products over their life cycles so as to avoid harm to people and the environment" (CEFIC, n.d.g.). The Responsible Care Global Charter and the Global Product Strategy (GPS) of the International Council of Chemical Associations from 2006 extend this goal of improvement to activities associated with the safe use and handling of products along supply chains.

However, despite their origin in the serious human rights impacts of the global chemical industry, both the Responsible Care Global Charter and the GPS have been criticised for their lack of reference to human rights, the UNGPs and workers' rights (The RockGroup, 2016; Business & Human Rights Resources Centre, 2018). The European chemical association CEFIC therefore updated its RC self-assessment tool to create a better link with ISO-norms, RBC and the SDGs. As such, the 2019 version contains a number of multiple choice questions on responsible sourcing, labour rights, value chain collaboration and stakeholder engagement (CEFIC, 2019). These elements overlap with the OECD Guidelines, but are significantly less detailed. The self-assessment tool used by VNCI varies slightly from the one promoted by CEFIC and is more output-oriented to capture improvements achieved, such as fewer emissions or incidents (VNCI, 2019b). In addition, VNCI has an 'RC light' tool for companies with fewer than 50 employees and associate members who are not aware of any major dangers and risks: this reduces the questions in the self-assessment by 90% (VNCI, 2019b). Overall, interviews confirm that human rights continue to receive rather limited attention in the Responsible Care programme. While the programme—and its operationalisation in the Netherlands through VNCI—entails a variety of indicators on which companies report annually, RBC in line with the OECD Guidelines (i.e. identifying, assessing and acting on identified risks in the supply chain) does not form part of it.

To date, Responsible Care remains the industry's flagship programme to implement what they consider the priorities in RBC—mostly related to environmental sustainability, without significant attention (yet) to the OECD Guidelines. Smaller companies can even fall under 'RC light'—despite the fact that they, too, are heavily export-oriented and also source raw materials through international supply chains.

Some frontrunner chemical companies are part of the 'Together for Sustainability' (TfS) initiative founded by a number of German chemical companies in 2011, which currently includes 26 multinational chemical companies, including major companies active in the Netherlands. At the core of TfS is the benchmarking of supplier performance across commodities, for which suppliers are audited every three years on environmental issues, labour practices and human rights, ethics and sustainable procurement. TfS explicitly builds on the principles of the Global Compact of the UN and the Global Reporting Initiative, but does not mention either the UNGPs or the OECD Guidelines.

Attention to due diligence in line with international guidelines is generally considered to be limited to the initiative of individual companies in the global chemical sector (Business & Human Rights Resources Centre, 2018). Several multinational companies, also in the Netherlands, have indeed committed to the UNGPs and human rights due diligence. However, interview respondents indicated that the activities of the chemical sector are not so much driven by RBC concerns or the Dutch Government's RBC policy. Many activities are done for reputation management (e.g. to be included in the Dow Jones Sustainability Index) or because of existing legislative requirements—not only in Europe, but also the PFAS regulations in the USA and Chinese regulations on air and water pollution have big effects on the chemical industry—and expectations of increasingly stricter legislation (Verhoef, 2020). The forthcoming EU Chemicals Strategy for Sustainability, which is currently debated, can offer an additional stimulus to reduce the risks associated with producing and using chemicals, but does not contain due diligence requirements.

At the Dutch sector level, climate change has been the centre of attention in recent years, also in response to international agreements. In 2018, VNCI adopted a Roadmap 2050 for meeting the goals of the Paris

Climate Agreement and the SDGs, aiming for sector-wide reductions in greenhouse gas emissions by 80-95% in 2050 compared to 1990. This recent focus is seen in connection with the chemical sector's enormous carbon footprint, including high energy demand and extensive use of fossil raw materials (Verhoef, 2020). As such, NGO pressure and pressures by institutional investors on the sector are also rising, according to interviews. Whether this leads to an increased focus on due diligence remains to be seen.

8.4.3 Electronics sector

There has not been a representative study on the compliance of the electronics sector with the OECD guidelines and/or UNGPs. Based on interviews, awareness in the sector regarding the international RBC guidelines continues to be low—particularly among SMEs—and little has changed in recent years in this regard. While larger companies do seem to have basic due diligence in place it is also unclear to what extent they comply with the six steps of due diligence as defined by the OECD Guidance and how effective companies' due diligence systems are. Smaller companies are typically said to lack RBC policies.

In fact, several reports on human rights violations in the electronics supply chains (see Box 2) point at deficiencies in human rights due diligence—also at large electronics companies. For example, electronics companies seem to be unable to determine from which mines the cobalt they procure originates, which makes it impossible for these companies to identify and address human rights risks in those mines (GoodElectronics & SOMO, 2016). Another example is a report that showed that gold from artisanal mines where child labour is documented has ended up at leading gold refineries in Switzerland, which are known to be important suppliers to the electronics sector (Schipper & De Haan, 2015). A final example is the fact that many companies were not aware of the RBC risks related to mica mining and the extent to which they rely on mica in their production processes (Schipper & Cowan, 2018). These three examples are not definite evidence of inadequate due diligence among electronics companies, but do suggest that the due diligence by electronics companies have, in these cases, been ineffective in identifying and addressing RBC risks. A recent report writes that the tentative disclosure of supply chain information by a number of large electronics companies does not systematically include information that is relevant for the realisation of human and labour rights (Gonzales et al., 2020).

Box 13. Human rights violations in the electronics supply chain

There are several civil rights organisations and initiatives addressing and reporting on human rights violations in the electronics sector, such as the GoodElectronics Network, Electronics Watch, and, in the Netherlands, SOMO, which over the years has built a large record of human rights' violations occurring in the supply chain for the electronics sector. These include child labour and unsafe working conditions in mines for mica (Schipper & Cowan, 2018), cobalt (GoodElectronics & SOMO 2016), tin (GoodElectronics & Milieudedefensie, 2016), and gold (Schipper & De Haan, 2015) and poor working conditions at electronics component factories in Thailand and the Philippines (Remmers & Schipper 2015), China (Chan et al., 2016), and Brazil (Campos et al., 2017).

At a sector level, the most concrete step in terms of RBC is the official support of the sector association FME to the metals agreement. FME also indicates a high level of motivation to promote RBC among its member companies. FME aims to make all members aware of their societal responsibilities, investigate RBC risks in their supply chains, determine how they are connected to these risks (cause, contribute to or linked to) and take appropriate action to address their responsibility (FME, n.d.g.). This has been part of FME's awareness-raising campaign since 2018.

Annexes



Annex 1. List of references

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Annex 2. Methodology of the evaluation

Evaluation approach

The evaluation followed a theory-based approach focused on validating the underlying theory of change of the different RBC agreements. This served to systematically identify and substantiate evidence of outputs, outcomes and (examples of) impact and establish the causal linkages to a specific RBC agreement. The approach also guided the evaluation in identifying the enablers and barriers for RBC agreements to move from input and outputs to outcomes and impact.

Theory of change (ToC)

The RBC agreements' ToC entails the important recognition that: a) doing business in developing countries and emerging markets incurs more RBC risks than doing business in OECD member countries; and b) RBC risks can neither be completely avoided nor reduced to zero in one day, which puts emphasis on addressing the most salient risks and remediation for potential victims (IOB, 2019). The goals of many RBC agreements is to avoid or mitigate negative impacts within three to five years.

Most RBC agreements have not articulated an individual ToC, with the exception of the agreement on garments and textile, which reconstructed its ToC in 2018. However, most agreements share an implicit ToC that focuses on company compliance with due diligence (IOB, 2019). This ToC is based on the assumption that RBC agreements lead to increased compliance with the OECD Guidelines and UNGPs. These guidance documents, in turn, are assumed to provide an adequate RBC framework and adherence to these frameworks contributes to a reduction of risks in global value chains and improved access to remedy for potential victims (impact pathway 1) (IOB, 2019). Commitment and compliance by companies is facilitated through a support structure (e.g. secretariat together with participating parties and agreement supporters) in the form of tools, guidance and monitoring of companies' due diligence processes.

The second impact pathway is based on the assumption that governments, businesses, NGOs, trade unions and other actors recognise the added value of agreements and cross-sector cooperation/learning. For instance, RBC agreements are considered to provide an important platform for companies to increase their (collective) leverage to mitigate adverse impact which companies do not directly cause or contribute to, but are linked to through their business operations and relationships (SER, 2014). An important expression of cross-sector collaboration is the establishment of collective prototype initiatives in global value chains that reduce risks and present opportunities for both companies and the communities in which they operate (IOB, 2019).

A third impact pathway is specifically relevant for the forestry agreement and the prematurely ended agreement on vegetable proteins, as well as the coal agreement (IOB, 2019). Although these agreements recognise improved due diligence as a result at the outcome level, their main focus is on developing the supply of, and demand for their products that meet RBC and/or sustainability standards (IOB, 2019, p. 78).

For a number of agreements, a fourth impact pathway lies in creating outreach to non-signatory companies and other initiatives, for expansion, alignment and, ultimately, scaling of impact.

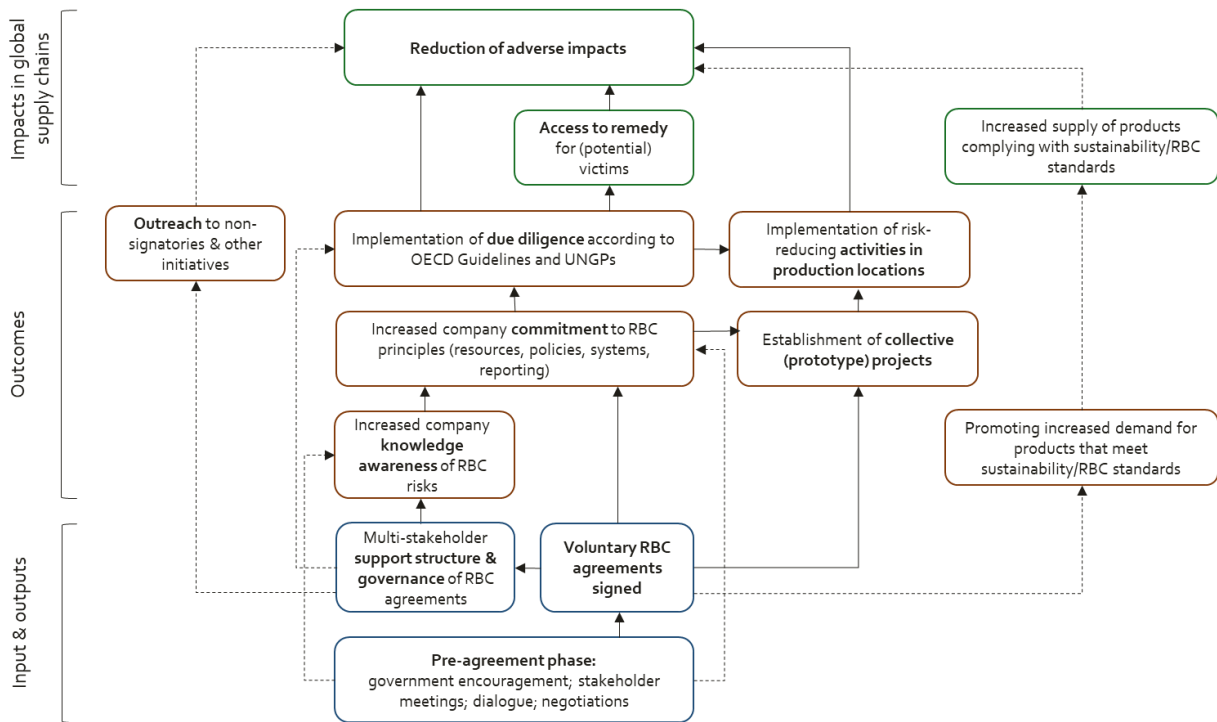


Figure 9. Reconstructed Theory of Change of RBC agreements

Source: Based on IOB (2019) and ToR for the evaluation of the RBC agreements

Evaluation steps

We followed a sequential evaluation procedure to comprehensively and systematically collect and analyse data.

1. *Portfolio review.* We started the evaluation with a thorough portfolio review to assess the inputs and outputs connected to each RBC agreement. The review was largely based on secondary data from multiple sources of publicly available information.
2. *Sector review.* Sector reviews were carried out to understand the major risks in each economic sector with an RBC agreement, and the size and influence of Dutch companies in global value chains. The sector review was based on global trade figures, academic literature on relevant value chains and sector reports, complemented with information obtained through semi-structured interviews.
3. *RBC agreement analyses.* All 11 RBC agreements studied were analysed in-depth following the evaluation questions of the ToR. A separate report was prepared for each RBC agreement. Depending on the sector (and the agreed depth of analysis) the individual reports focused on the pre-agreement phase, agreement description, reach and coverage, effects on due diligence (especially agreements from pre-2019 where first effects could be expected), effects in the supply chain (especially agreements from pre-2018), evidence for scale-up, efficiency, lessons learned and recommendations.
4. *Cross-comparison and aggregate analysis.* The individual reports formed the basis for a comparison across RBC agreements and the aggregate analysis. While the purpose of the evaluation was not to compare RBC agreement for rankings (e.g. which agreement is most effective?), the comparison served to find patterns of commonalities and dissimilarities.
5. *'Counterfactual' analysis.* An analysis was conducted for three sectors which were identified as high-risk sectors by KPMG but which did not sign an RBC agreement: oil and gas, chemicals, and electronics. Data

sources included semi-structured interviews with sector associations and other stakeholders (e.g. independent experts and NGOs). The three sectors were studied and analysed separately based on a shared reporting format. Afterwards, the sectors were compared for the aggregate analysis.

Data sources

For each RBC agreement, two main types of information sources were used:

1. Semi-structured interviews with key informants [primary data]. Semi-structured interviews were held with key informants to include the views and reflections of stakeholders (RBC signatories, secretariats, sector associations, CSOs, Dutch Government and independent experts). Interview topics included, amongst others, enablers and barriers for agreement negotiation, added value of RBC agreement, support and progress in (due diligence) implementation, impacts observed, limitations and improvements required.

Interviews were conducted using a semi-structured approach, in which a questionnaire with open-ended questions led the discussion, but further (e.g. follow-up) questions were also able to be asked. Interviews were transcribed and transcripts were sent to discussion partners for validation where requested. All interviews were conducted with respondents' written consent.

2. Review of secondary data. Secondary data used for the report includes different reports and documents on RBC agreements (such as annual reports, monitoring reports, newsletters, factsheets, studies and discussion papers) published by the Ministry of Foreign Affairs, Dutch House of Representatives (Tweede Kamer), secretariats of RBC agreements and other parties in the agreement. In addition, for each RBC agreement, we looked for independent studies for validation of the data collected, which included academic publications, independent benchmarks and NGO reports/studies. We also included, where relevant, news items and other documents on RBC agreements found through a web search.

Selection of respondents

In total, 134 semi-structured interviews were conducted for the evaluation (Table 27). Respondents were selected based on a purposeful selection procedure with input from SER and the Ministry of Foreign Affairs. The final choice of respondents was the responsibility of KIT. Selection was primarily based on: (a) coverage of different types of stakeholders involved to ensure a balanced perspective reflecting the multi-stakeholder character of the RBC agreements; (b) a preference was given to individuals who have been active in RBC agreements and have been involved for a longer period of time to obtain in-depth insights; and (c) we also sought to interview non-involved stakeholders for all agreements that were signed before 2019 where we expected more effects at output and outcome (and impact) levels to be visible. Non-involved stakeholders included individuals from organisations that are not part of RBC agreements but have in-depth sector knowledge and who have followed RBC agreements for a longer period of time ('outside observers'). Most interviews took place between January and April 2020, and a number of additional interviews were conducted in May and June 2020. Most interviews lasted between 60-90 minutes, with only a small number of shorter interviews.

Table 27. Interviews conducted for the evaluation

RBC agreement	Secretariat/ chair	Companies	Sector association	Govern- ment	NGOs	Unions	Non- involved stake- holders	Sub-total
General	2	0	0	0	0	0	1	3
Banking	1	5	1	2	2	2	2	15
Coal	0	1	0	1	0	0	3	5
Floriculture	1	2	0	1	1	1	0	6
Food products	2	1	2	2	2	1	1	11
Forestry	1	0	4	1	2	1	2	11
Garments & textile	2	5	1	1	2	1	3	15
Gold	2	5	2	1	1	0	2	13
Insurance	2	3	2	2	3	1	1	14
Metals	2	1	1	1	1	1	1	8
Pension funds	2	3	2	1	3	1	2	14
TruStone	1	3	1	2	1	2	0	10
Control sectors	0	0	6	1	0	0	2	9
Sub-total	18	29	22	16	18	11	20	134

Data analysis

Interviews were prepared based on stakeholder-specific interview guidelines with each interview question explicitly linked to a relevant ToR research question. For each research question, the relevant information captured in the interview notes was grouped ('coded'). The analysis brought to light different stakeholder perspectives: a) perspectives for which there was consensus among a (sub-)group of interviewed stakeholders; b) perspectives that came from a singular source; and c) perspectives on which there was disagreement (major contradictions were not encountered). Where possible, triangulation with documentation was conducted to check the validity of these perspectives. The analysis is based primarily on the viewpoints on which there was consensus and which could be substantiated by secondary data.

Triangulation & validity

A number of measures were taken to address concerns regarding the validity and reliability of data and results (Table 28). *Construct validity* was enforced by using a reconstructed ToC, based on IOB (2019). We were therefore able to link data on RBC agreements to specific 'steps' in the ToC. *Internal validity per agreement* was supported by: a) selecting a variety of interview respondents who participate in the different RBC agreements; b) selecting external key informants with first-hand knowledge of RBC agreement processes; and c) drawing on document resources, both from the agreements as well as from third-parties. These different data sources served the purpose of triangulation. *Internal validity across agreements* was supported through: a) team-internal presentation and discussion of cases; b) peer review of agreement analysis; and c) cross-comparison of the 11 agreements to find patterns of commonalities and differences (including outliers) among agreements.

Table 28. Information sources used in the evaluation

Purpose	Primary data	Secondary data
In-depth analysis of RBC agreements, activities and progress viz. international reference framework (OECD Guidelines and UNGPs); perspectives and experiences of different stakeholder groups: comparison and contrasting their level of agreement and divergence on the same subject	Interviews with RBC secretariats, government representatives, selected RBC signatory companies and NGOs / unions, sector associations	RBC agreements, websites, news items, RBC (annual) reports, evaluations, government documentation, NGO reports, media items, etc.
Validation of findings through independent sources	Expert interviews with non-involved NGOs, researchers, evaluation reference group	Academic research, independent RBC benchmarks

Limitations

The following limitations pertaining to methodology (points 1-4) and data availability (points 5-7) should be noted by the reader.

1. *Early stage of six RBC agreements.* A key limitation in answering all research questions to the same degree is the fact that six RBC agreements (food products, insurance, pension funds, metals, floriculture and TruStone) are still quite young and have been operational for less than two years. This limits the extent to which information is available and results can be expected for these agreements.
2. *Difficulties of attributing due diligence outcomes to RBC agreements.* Attributing improved due diligence of companies to the specific influencing factor of an RBC agreements is difficult, as due diligence outcomes are determined by various factors. Factors include other policies and regulations impacting on companies, costs/benefits of 'doing no harm' to businesses, sector environment, competitive pressures on companies, and leadership and organisational culture of businesses. As also shown in Chapter 5, several of the identified factors that enable or hinder due diligence implementation by companies are not directly connected to the RBC agreements.
3. *Limited insights on the quality of due diligence.* Chapter 5 emphasised that the public reporting of RBC agreements, such as annual reports, gives little insights on the quality of due diligence by companies. This includes the types of due diligence actions that were taken by companies, whether these actions were assessed as appropriate to the nature of the specific impact, and whether they were commensurate with the severity and likelihood of the adverse impact. To investigate the quality of companies' due diligence, a different evaluation approach would be necessary and a comparative investigation into the due diligence processes and reporting of individual companies would be recommended.
4. *Difficulties of measuring impact (at this stage).* Chapter 6 highlighted the limited data available on the impacts of RBC agreements, be it on sector-specific themes (few, if any, concrete targets and largely not reported on), through due diligence (companies in most RBC agreements have not yet progressed to the stage of addressing risks) and through collective projects (limited reporting available; no third party studies). This does not imply that there is no impact from the RBC agreements, but that impact is limited at this stage (i.e. there is limited evidence of any impact) and may take longer to manifest.
5. *Few baselines available.* Only the agreements on insurance, pension funds and food products have conducted a baseline measurement exercise to assess the conformity of companies to the OECD Guidelines at the beginning of the agreements' implementation. None of the other agreements have done so, to the best of our knowledge, which limits the ability to monitor progress over time.
6. *Limited availability of secondary data.* There is an overall shortage of secondary data and information on the RBC agreements:

- a. Most RBC agreements only publish limited amount of information on the progress that they have made and often, only short summaries are included in the annual reports. Secondary information is particularly limited on the collective projects started by the RBC agreements.
 - b. For the agreements signed in 2019, hardly any written information was available, seeing that these agreements had not yet published an annual report at the time of the evaluation. These agreements also do not provide much information on their website. For instance, the floriculture agreement has not published any update on its website since it was signed in mid-2019.
 - c. For all RBC agreements, except garments and textile and coal, the most recent annual reports account for activities/results from 2018—hence, more than one year ago. There is thus the risk of outdated information. For banking, the final agreement report is not yet published. Finally, there are few third-party studies available on the RBC agreements.
7. *Cases of non-availability of relevant respondents.* For several agreements, the individuals currently involved in its implementation (e.g. representatives from government, sector associations, NGOs) are not necessarily the ones who were present during the negotiation phase or in the beginning of the agreement implementation. This was notably a constraint in cases where an organisation could not be replaced by another organisation to be interviewed (e.g. government). There were also a number of non-responses for interview requests; particularly in the gold agreement, it proved challenging to speak to representatives of the jewellery and trade sub-sectors. Furthermore, in the three economic sectors that serve as counterfactual, it was difficult to find willing respondents who were knowledgeable about (a) the reasons for not choosing to negotiate an RBC agreement during 2014-2017; and/or (b) the current adherence to the OECD Guidelines by the respective sectors.