

## The importance of including small and medium-sized enterprises in legislation for responsible business conduct

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**For legislation on responsible business conduct to be effective and have sufficient impact, it is essential that it applies to *all* businesses, including small and medium-sized enterprises (SMEs).<sup>1</sup> Meeting responsible business conduct (RBC) standards by conducting due diligence is not necessarily harder or easier for SMEs than for large companies; it is different. It is important that government authorities provide SMEs with appropriate support and that supervisory authorities promote the ability of SMEs to learn and improve. By conducting due diligence, SMEs contribute to preventing human rights abuse and environmental damage in their value chains, such as child labour, deforestation and climate damage.**

According to the [OECD Guidelines](#), all businesses must practise responsible business conduct by performing due diligence. This means that businesses must identify risks of human rights abuses and environmental damage in their operations and value chains and subsequently take action to address these risks. Complying with the OECD Guidelines is the most important contribution businesses can make to achieving the Sustainable Development Goals (SDGs).<sup>2</sup>

The OECD Guidelines require businesses to conduct due diligence in a manner that is proportionate to the risks, severity and irreversibility of adverse impacts. The way due diligence is implemented also depends on the size of the company and its position in the value chain (such as producer, end user or intermediary).<sup>3</sup> Conducting due diligence is different for, for instance, a large enterprise with thousands of employees in the garment sector than for a medium-sized clothing company with 200 employees, or a small fashion web shop with ten employees.

Carrying out due diligence is different for SMEs, because these types of enterprises often have a much smaller individual impact on human rights in value chains than large enterprises. SMEs also often have more limited financial resources. At the same time, small and medium-sized enterprises represent more than 60 per cent of added value in the Dutch economy<sup>4</sup> and are key players in many value chains. Risks of serious abuses of human rights and environmental standards, such as excessive overtime, environmental pollution and unequal treatment of female employees, are present in the value chains of SMEs in nearly all sectors. SMEs therefore play a vital role in addressing and preventing these types of negative impacts.

### **Due diligence also works for small and medium-sized enterprises**

Due diligence can also be implemented by SMEs, in spite of their more limited size and leverage in value chains.<sup>5</sup> In many cases, small and medium-sized businesses have more straightforward value chains and fewer suppliers than large companies, and they maintain more personal and long-term relationships with suppliers. This often makes it easier for them to identify risks in their value chains and to take action, either individually or in collaboration with other companies. SMEs are also often more flexible and better able to deal with new challenges than large companies. SMEs often have a corporate culture geared towards respecting human rights and the environment or are able to develop one relatively quickly.<sup>6</sup> SMEs in various sectors, such as natural stone, textiles and garments and food, are already demonstrating that conducting due diligence is feasible for them.

In concrete terms, a small or medium-sized company could start by asking suppliers about the origin of products and the conditions under which these products are produced and by including responsible business practices in contract conditions for suppliers. SMEs can also exert influence on suppliers collectively through industry associations or sectoral cooperation initiatives. Purchasing certified products could also be a tool for promoting value chain transparency and addressing RBC risks, provided that the quality and criteria of the certification system are credible.<sup>7</sup> Furthermore, if there is no

prospect of improvement after repeated attempts, SMEs can examine whether switching to another supplier would be an appropriate step towards building responsible value chains.

### Support for SMEs

It is vital that the Dutch government facilitates and supports SMEs in carrying out due diligence by providing guidance and support and facilitating sectoral cooperation initiatives. For instance, companies can use the [RBC Risk Check](#) to gather information on RBC risks in specific value chains and countries; another tool is MVO Nederland's [Step-by-step Guide for RBC Risk Management](#) [in Dutch only]. In addition, there are already many sector-specific instruments and guidance documents that support businesses, such as those in the garment, fruit and vegetable, and minerals sectors.<sup>8</sup>

Smaller companies can also participate in the Dutch International RBC Agreements, which elaborate how small, medium-sized and large enterprises are expected to conduct due diligence per sector (see, for example, the [Trustone Initiative](#)). Within these agreements, SMEs can also take joint action and receive support in performing due diligence, such as in the [Food Products Sector Agreement](#), which makes use of a “self-evaluation tool”. It is important that the Dutch government expands support for SMEs as part of its new RBC policy, such as via the new RBC support office.

### Legislation and SMEs

In addition to supporting SMEs, comprehensive due diligence legislation is needed to prevent companies' negative impacts on people and the environment in value chains. It is vital that legislation not only applies to the largest enterprises (with 500 employees or more) in the Netherlands, but also to large enterprises (with more than 250 employees) and SMEs. Legislation that obligates businesses to conduct due diligence in accordance with the OECD Guidelines is needed to ensure that *all* companies do business with respect for human rights and the environment, instead of frontrunner companies only. Legislation would also ensure that SMEs which start doing business responsibly no longer experience a competitive disadvantage with companies that do not, as is currently the case for many SMEs that participate in the International RBC agreements in the natural stone and garment and textile sector (the “free rider” problem).

SMEs themselves are also requesting RBC legislation – as shown by the support of many SMEs for the [Initiative for Sustainable and Responsible Business Conduct](#) (IDVO) and the call for RBC legislation from the MVO Nederland business network, which is largely comprised of SMEs.<sup>9</sup> Furthermore, in 2020 various parties in the Social and Economic Council (SER), including MKB-Nederland (the Dutch SME Association), advised the cabinet to introduce due diligence legislation that also applies to SMEs.<sup>10</sup> Moreover, if a due diligence obligation were only to apply to large companies, many SMEs would still be indirectly obliged to comply as they are part of the value chains of large companies. It is therefore better to include SMEs directly when designing such legislation, so that legislators take into account their position and ensure specific support is offered to comply with legislation.

It is important that RBC legislation appeals to the learning capacity of companies and where possible offers them the opportunity to improve.<sup>11</sup> The government and supervisory body should take this into account when enforcing the law, for example, by offering SMEs fitting support and specific recommendations. The supervisory body could also choose to give SMEs additional time to comply with the law, depending on the sector and their previous experience with due diligence. The regulator would only apply stronger measures after it appears that its recommendations were not followed repeatedly.

Addressing human rights abuses and environmental damage in value chains will take time and effort by businesses, especially for the companies which are lagging behind and have so far taken no action to identify and prevent abuses in their value chains. Nonetheless, studies by the OECD and the British Institute of International and Comparative Law (BIICL, commissioned by the European Commission) show that the costs of due diligence comprise only a small portion of the revenues of both large companies and SMEs.<sup>12</sup> According to the BIICL, this amounts to 0.1 per cent of the average revenue of

an SME.<sup>13</sup> Furthermore, legislation would also lead to cost benefits: the costs of due diligence per company would be lowered because the legislation would require many more companies to conduct due diligence. Costs would also be reduced because legislation would ensure a level playing field, legal clarity, more effective leverage on value chain partners and lower reputational costs.<sup>14</sup> The benefits of due diligence legislation could thus easily outweigh the costs. Moreover, investment in preventing human rights abuses and environmental damage in value chains should not be based on a cost-benefit analysis, but should be a responsibility that is taken seriously by both governments and businesses.

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<sup>1</sup> With the exception of sole traders. By way of illustration: according to Statistics Netherlands (CBS), the Netherlands has 15,190 companies with more than 50 employees, of which 3,280 have more than 250 employees (figures from the first quarter of 2020). There are 1,590 companies with more than 500 employees in the Netherlands. A total of 1.9 million businesses are registered in the Netherlands, of which 1.4 million have only one employee (mostly sole traders/self-employed) ([CBS Statline](#), 2021).

<sup>2</sup> See the [SER advisory report](#) on IRBC and the SDGs (2019) and the MVO Platform's [position paper](#) (2018) [in Dutch only].

<sup>3</sup> See also questions 6 and 7 in the [OESO Due Diligence Guidance](#) (p. 46-47), which offer practical examples and suggestions.

<sup>4</sup> Source: Staat van het MKB, [Jaarbericht 2019](#) (in Dutch). SMEs are the backbone of the value chains of many large enterprises.

<sup>5</sup> See also questions 6 and 7 in the [OESO Due Diligence Guidance](#) (p. 46-47), which offer practical examples and suggestions.

<sup>6</sup> See also [Shift](#) (2020), "On Mandatory Due Diligence, SMEs Don't Need a Free Pass; they Need Flexibility".

<sup>7</sup> Read more in the MVO Platform's position paper (2019) on [certification and due diligence](#).

<sup>8</sup> See also the [sectoral guidance documents](#) of the OECD.

<sup>9</sup> [MVO Nederland](#) (2020), p. 5 (in Dutch).

<sup>10</sup> [SER](#) (2020), *Samen naar duurzame ketenimpact*, p. 39 (in Dutch).

<sup>11</sup> Read more about [effective enforcement](#) of legislation for responsible business conduct in the MVO Platform's position paper.

<sup>12</sup> [BIICL](#) (2020), *Study on due diligence requirements through the supply chain. Part I, Synthesis report*, p. 66; [OESO & University of Columbia](#) (2016), *Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct*, p. 10-11.

<sup>13</sup> [BIICL](#) (2020), p. 66.

<sup>14</sup> [BIICL](#) (2020), *Study on due diligence requirements through the supply chain. Final report*, p. 449-450.