



# International Responsible Business Conduct Agreement for the Renewable Energy Sector

Integrating sustainability and human rights  
in the energy transition



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MARCH 2023

The National Contact Point of the OECD Guidelines for Multinational Enterprises of the Netherlands (Dutch NCP) was consulted in the development of the text of the Agreement for an examination of the conformity of the Agreement with the OECD Guidelines. The Dutch NCP concludes that it has found no contradictions in the text of the Agreement with the OECD Guidelines for Multinational Enterprises.

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# List of abbreviations and acronyms

CAI - Collective Actions and Increasing Leverage

DDAP - Due Diligence Action Plan

ILO - International Labour Organization

CAPs - Contracting Authorities and Renewable Energy Technology Platforms

KIs - Knowledge Institutions

MAT - Maturity Assessment Tool

MNEs - Multinational Enterprises

NCP - National Contact Point for the OECD Guidelines for Multinational Enterprises

NGOs - Non-Governmental Organisations

OECD - Organisation for Economic Co-operation and Development

OECD Guidelines - OECD Guidelines for Multinational Enterprises

REDCDC - Renewable Energy Complaints and Disputes Committee

RBC - Responsible Business Conduct

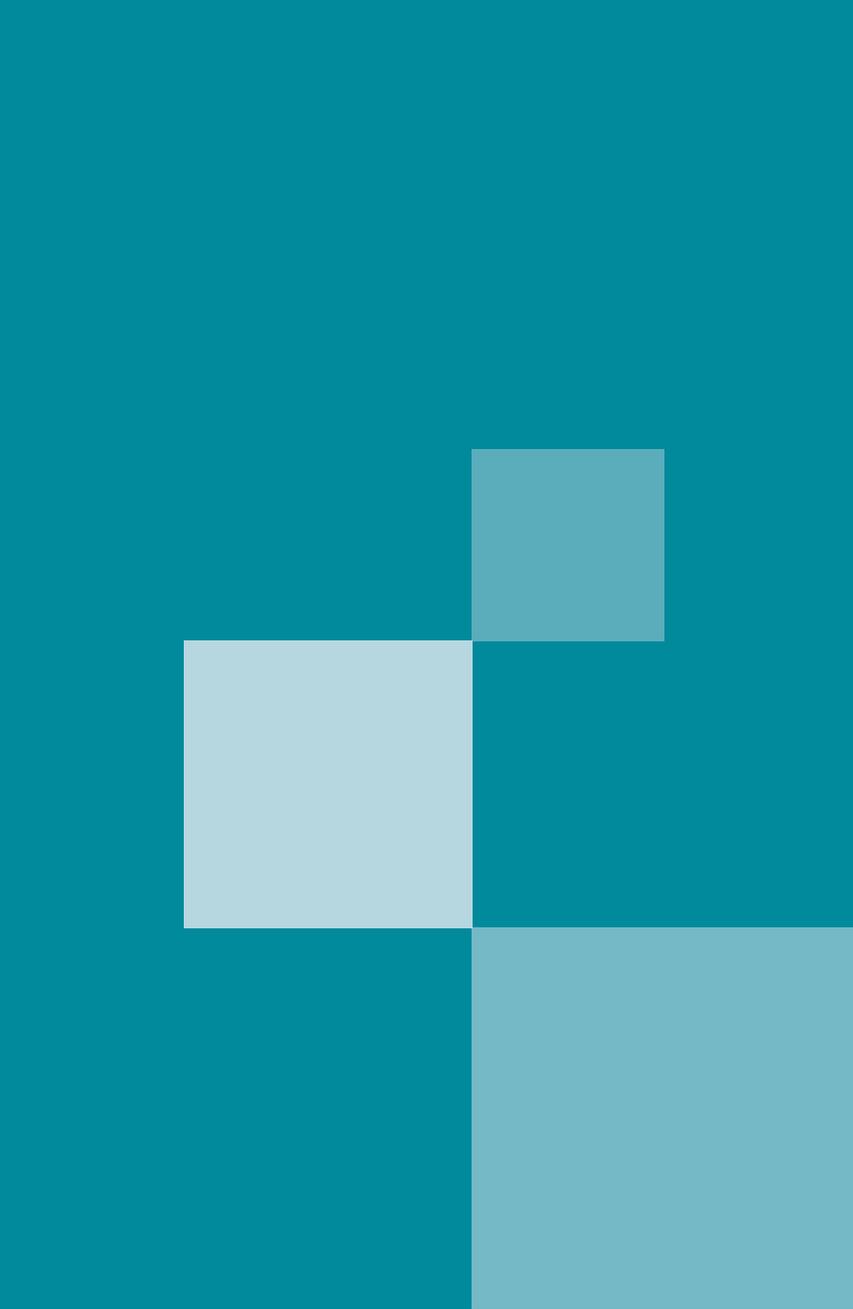
SDGs - Sustainable Development Goals of the United Nations

SER - Social and Economic Council of the Netherlands

The Guidance - OECD Due Diligence Guidance for Responsible Business Conduct

UNGPs - United Nations Guiding Principles on Business and Human Rights





International  
Responsible  
Business Conduct  
Agreement for  
the Renewable  
Energy Sector



## Executive Summary

Increasing the consumption of renewable energy is essential for meeting global aspirations towards a green and sustainable economy. The processes involved in the production of technologies for the generation of renewable energy is not free of risks to people, the natural environment and biodiversity. The supply chains of such green technologies are complex and often lack the necessary transparency to enable the effective identification and mitigation of the associated impacts. Through this Renewable Energy Sector Agreement, the signatories aim to contribute to creating more transparency in the renewable energy technologies supply chains and to (collectively and individually) take concrete steps to address potential and actual adverse impacts therein.

The Agreement contains collective and individual commitments for the participating organisations, consisting of companies, industry associations, labour unions, non-governmental organisations (NGOs), knowledge institutions, the government of the Netherlands and other institutions-both private platforms and contracting authorities-active in the procurement and/or tender of renewable energy technologies.

In this Agreement, the Companies commit to apply recognised international responsible business conduct standards throughout their operations in the renewable energy sector; particularly with respect to wind and solar energy technologies. The applicable international standards are the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. The other Parties commit to support and monitor the efforts of the Companies, and to actively promote the broader adoption and the integration of responsible business conduct in the energy transition in their respective contexts.

The signatories aspire to scale up the Agreement in terms of numbers and (geographical) diversity. They commit to undertake actions to increase the number of participants and outreach activities. The higher the number of participants, the greater the combined leverage of the signatories for realising positive impact in the supply chains. The Agreement is therefore open to relevant organisations, initiatives and Companies active in different nodes of the renewable energy supply chain that endorse its goals and aspirations at the national and European level.

The implementation of the Agreement shall be in accordance with national and European competition law.



# Participating organisations

## The Parties

1. Minister for Foreign Trade and Development Cooperation of the Kingdom of the Netherlands, Liesje Schreinemacher, acting in the capacity of governing body
2. Minister for Climate and Energy Policy of the Kingdom of the Netherlands, Rob Jetten, acting in the capacity of governing body

**Parties 1 and 2 collectively referred to hereafter as “the Government”**

3. Holland Solar
4. Nederlandse WindEnergie Associatie

**Parties 3 and 4 collectively referred to hereinafter as “the Industry Associations”**

5. Esdec B.V.
6. GE Offshore Wind
7. Groendus Groep B.V.
8. GroenLeven B.V.
9. Natec Sunergy B.V.
10. N.V. Eneco
11. Ørsted Wind Power Netherlands B.V.
12. RWE Renewables Benelux B.V.
13. Shell Overseas Investments B.V.
14. Siemens Gamesa Renewable Energy B.V.
15. Solarfields Nederland B.V.
16. Sunbeam B.V.
17. Sunrock Investments B.V.
18. Vattenfall N.V.
19. Vestas Benelux B.V.

**Parties 5 through 19 collectively referred to hereafter as “the Companies”**

20. IUCN National Committee of the Netherlands
21. North Sea Foundation
22. Stichting Terre des Hommes Nederland

**Parties 20 through 22 collectively referred to hereafter as “the Civil Society Organisations”**

- 23. Federatie Nederlandse Vakverenigingen (FNV)
  - 24. Christelijk Nationaal Vakverbond in Nederland (CNV)
- Parties 23 and 24 collectively referred to hereinafter as “the Labour Unions”**

- 25. The Danish Institute for Human Rights
- Party 25 referred to hereafter as “the Knowledge Institution”**
- Parties 3 through 25 are collectively referred to hereafter as “the Private Parties”**

## **The Supporting Organisations**

- 26. ASN Bank
- 27. ASN Impact Investors
- 28. Stichting TKI Wind op Zee
- 29. Vereniging Energie-Nederland
- 30. Nederlandse Vereniging Duurzame Energie
- 31. WindEurope asbl/vzw

## **The Contracting Authorities and Renewable Energy Technology Platforms (CAPs)**

- 32. Vereniging Eigen Huis
- 33. Rijksvastgoedbedrijf

**Collectively, the Parties, the Supporting Organisations and adhering Contracting Authorities and Renewable Energy Technology Platforms (CAPs) – that will join the Agreement in the future – will be referred to as “signatories”.<sup>1</sup>**

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<sup>1</sup> The Agreement text includes the organisations that signed during the signing ceremony of 6 March 2023. An up-to-date list of current signatories to the Renewable Energy Agreement can be found on this website: <https://www.imvoconvenanten.nl/en/renewable-energy/participants>

# 1 Considerations

Considering that:

- 1.1 The renewable energy sector generates jobs and wealth, and contributes to (local) economic development;
- 1.2 Driven by the need to combat the climate emergency, the demand for renewable energy continues to grow. The increase in demand for renewable energy is accompanied by an exponential growth in demand of raw materials, leading to more pressure in supply chains;
- 1.3 The growing demand for renewable energy does not only affect the climate, energy consumers and producers. The sector's operations as well as its long and complex supply chains also affect individuals, communities, nature and biodiversity worldwide;
- 1.4 The (actual and potential) risks and impacts connected to the renewable energy sector include, but are not limited to, violations of workers' and children's rights as well the rights of local communities and indigenous peoples. They also concern damage to the natural environment and biodiversity loss;
- 1.5 The own operations of the companies in the sector and the supply chains of the renewable energy technologies can potentially be connected to such adverse impacts;
- 1.6 The transparency of the renewable energy supply chain and the traceability of materials to their point of origin is limited due to, among other things, the diversity of the materials used as well as the volatility and complexity of the supply chains;
- 1.7 The political, governance, human rights and socio-economic situations, as well as the vulnerability of the ecosystems of producing countries and the countries of operation can also impede efforts to trace materials to their origin and to tackle identified severe risks and impacts;
- 1.8 The companies in the renewable energy sector are diverse in terms of size, institutional structure, their position in the supply chain, and sustainability practices and maturity;
- 1.9 Responsible business conduct (RBC) in the renewable energy sector is a precondition for sustainable and inclusive economic growth, and contributes to sustainable global value chains and to the achievement of the Sustainable Development Goals of the United Nations (SDGs). Responsible business conduct in combination with a just transition, can minimise negative impacts of the energy transition on individuals and communities.

- 1.10 There is a growing number of regulations and initiatives at the national, regional and international levels, aimed at ensuring that businesses take action to identify, prevent, mitigate and account for actual and potential human rights impacts and/or violations of environmental laws/standards;
- 1.11 Corporate Sustainability Reporting Directive has been adopted and the proposal for the Corporate Sustainability Due Diligence Directive have been presented by the European Commission;
- 1.12 In 2014, at the Dutch Government's request, the Social and Economic Council of the Netherlands (SER) issued an advisory report on Agreements for International Responsible Business Conduct<sup>2</sup> in which it called for sectors to take the initiative to enter into multi-stakeholder agreements to collectively address severe risks and adverse impacts to people and the environment that businesses cannot tackle individually;
- 1.13 In 2020, the Dutch government adopted a new RBC policy outlining a smart mix of measures<sup>3</sup> that could lead to the greatest impact concerning the prevention and mitigation of risks to people and the natural environment in supply chains, informed by, among other things, the SER advisory report *Working together for Sustainable Supply Chain Impact*<sup>4</sup>
- 1.14 The main benefits of cooperating in a multi-stakeholder international RBC agreement for the Companies include the following:
- Improving Company due diligence practices to address possible adverse impacts on the ground and to contribute to sustainable development;
  - Gaining expertise, and access to (the best practices of) relevant networks of the other participants in the Agreement for due diligence implementation;
  - Developing and using tailor-made tools and instruments for conducting and reporting on due diligence;
  - Potential lower costs of due diligence, by, for example, collectively developing due diligence tools and instruments;
  - Increased leverage towards other supply chain entities by working together with the other Parties to the Agreement;
  - Levelling the playing field, taking into account the relevant competitions rules;
  - Contributing to realising relevant SDGs;
  - Meeting stakeholder expectations;

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<sup>2</sup> <https://www.ser.nl/-/media/ser/downloads/engels/2014/international-responsible-business-conduct.pdf>

<sup>3</sup> <https://www.government.nl/documents/policy-notes/2020/10/16/from-giving-information-to-imposing-obligations>

<sup>4</sup> <https://www.ser.nl/-/media/ser/downloads/engels/2020/sustainable-chain-impact.pdf?la=en&hash=A46ED36B78F30856A7909F5DACEFACA8>

- Strengthening Company capacity to comply with the envisaged mandatory due diligence legislation at European Union level;
  - Increasing corporate value and boosting commercial advantage.
- 1.15 The collective benefits of cooperating in a multi-stakeholder RBC agreement for all the Parties include the following:
- Parties are able to realise positive impacts in the supply chains that they otherwise would be unable to achieve on their own;
  - By working together, they increase their leverage towards specific actors in the supply chain to address specific complex problems;
  - By having direct contact with participating Companies, the other Parties gain a better understanding of business dilemmas and have channels to address issues collaboratively;
  - They contribute to realising relevant SDGs;
  - Collaboration helps shift the focus away from incidental issues and how to manage them towards structural management and solutions for complex problems in global supply chains;
  - Collaboration can strengthen the efforts of individual organisations to promote the international RBC agenda at the international and European levels.
- 1.16 A multi-stakeholder RBC agreement is a platform for cooperation and peer learning between different actors in the supply chains in order to positively impact social and environmental conditions in the renewable energy sector;
- 1.17 A multi-stakeholder RBC agreement is the result of dialogue, knowledge sharing and mutual gains negotiations between Companies, Industry Associations, Civil Society Organisations, Knowledge Institutions and the Government with a view to addressing negative human rights and environmental impacts in the operations and supply chains that Companies are unable to tackle on their own;
- 1.18 An RBC agreement is based on a collective multi-stakeholder approach to problem solving, and departs from the concept of knowing and showing. The Parties affirm that this Agreement is of an added value to each signatory that could not be attained without the collaboration;
- 1.19 A multi-stakeholder RBC agreement envisions continuous and progressive improvement of the sustainability practices in the operations and supply chains of the Companies;
- 1.20 Although there are various other sustainability initiatives in place in other economic sectors, there is value in having a tailor-made initiative to promote RBC in the renewable energy sector, as the differences warrant examining each sector individually;

1.21 Other international RBC agreements, such as the former Agreement on Sustainable Garments and Textiles, the International RBC Agreement for Metals Sector, the TruStone Initiative and the Agreement for the Pension Funds serve as a source of inspiration for this multi-stakeholder RBC Agreement.

Hereby agree as follows:

## 2 Goals, scope and compliance with (future) legislation

### Goals

- 2.1 This International RBC Agreement for the Renewable Energy Sector (hereafter: the Agreement) contains the ambitions and commitments of the signatories towards each other to advance compliance with international standards for responsible business conduct in the operations of the participating Companies, and in relation to their supply chains.
- 2.2 Through this Agreement, the Parties aim to collectively prevent and address severe actual and potential adverse impacts to people, the natural environment and biodiversity in the renewable energy supply chains. They aim to do so by supporting and monitoring the efforts of the Companies to identify, prevent, mitigate and account for such actual and potential adverse impacts, and by using their collective leverage to undertake actions that will positively impact the broader renewable energy sector supply chains.
- 2.3 The Parties also aim to encourage contracting authorities and other institutions involved in the tender and/or procurement of renewable energy technologies to incorporate international RBC standards in their policies and conditions with a view to incentivise and encourage interested suppliers to operate and source responsibly.
- 2.4 Ultimately, the Parties, individually and through cooperation, will endeavour to achieve structural and actual positive impact in the lives and livelihoods of people on the ground, and in relation to the natural environment and biodiversity. They strive to minimise negative human rights, social and ecological effects and maximise the socio-economic and ecological opportunities at all stages of the supply chain, including the construction, operational and decommissioning phase of both offshore and onshore wind farms and solar energy projects, through the use of best available technologies and environmental practices.
  - 2.4.1 The Parties acknowledge the importance of respecting labour rights, especially the right of the employees to form employees' representative bodies, to collective bargaining for the regulation of working conditions and their right to strike. Founding, joining or being a member of a workers' union shall not be used as a reason for a lack of equal treatment or retaliation. In this context, the Parties shall strive to implement relevant international standards in this field, such as the ILO Declaration on Fundamental Principles and Rights at Work,

the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights.

- 2.5 Each signatory commits to actively contribute to the realisation of the goals and ambitions of the Agreement.
- 2.6 The signatories declare that they will comply with all applicable competition laws in the implementation of the Agreement.

### Normative scope

- 2.7 The international business and human rights standards that the Parties commit to implement through this Agreement are the 2011 UN Guiding Principles on Business and Human Rights (UNGPs) and the 2011 OECD Guidelines for Multinational Enterprises (OECD Guidelines). The Parties declare that all the chapters of the OECD Guidelines and all the pillars of the UNGPs fall within the scope of the Agreement.
- 2.8 In the event of discrepancy between the text of this Agreement, its appendices or any supporting and implementation documents and the above-mentioned frameworks, the text of the UNGPs and the OECD Guidelines prevail.
- 2.9 The Parties recognise the importance of aligning their efforts with existing and future mandatory legislation with respect to responsible business conduct, especially at the level of the European Union (EU). In this regard, once the legislation pertaining to corporate sustainability due diligence and corporate sustainability reporting is in place, the Parties will strive to align the Agreement with its requirements. If the alignment results in financial implications not foreseen in the current Agreement budget, the Parties shall devise a solution for bridging the financial gap within the existing financial framework.
- 2.10 Should EU institutions set out a formal recognition scheme for compliance of sustainability initiatives with the EU sustainable corporate governance legislation, the Parties will seek to attain such recognition.

### Sectoral and geographical scope

- 2.11 The sectoral scope of this Agreement encompasses primarily the wind energy sector and the solar energy sector respectively.
- 2.12 The sectoral scope of the Agreement can only be amended by a decision of the General Assembly to this effect.
- 2.13 A proposal for expanding the sectoral scope of the Agreement to be presented to the General Assembly must be submitted by the Steering Committee.
  - 2.13.1 A proposal from the Steering Committee to expand the sectoral scope of the Agreement shall also include considerations for how

the expansion will impact the agreed budget for the Agreement. To this effect, a financing plan shall be presented by the Steering Committee, if the expansion of the sectoral scope would result in additional costs for the implementation of the Agreement.

- 2.14 Each Company shall, at the signing of the Agreement, indicate its preferred sectoral scope (wind energy and/or solar energy) for the monitoring of its RBC actions.
- 2.14.1 The applicable sectoral scope of the Agreement can be expanded by the Company at a later stage with a notice to the Independent Secretariat and the Steering Committee at least 3 months prior to the date from which the Company wishes the expansion to take effect.
- 2.15 The renewable energy sector as referred to in this Agreement consists of all entities – including but not limited to: relevant raw materials extracting, processing and producing enterprises; semi-product manufacturers; original equipment manufacturers; producers, distributors and installers of wind turbines and solar panels; businesses involved in decommissioning renewable energy technologies and processing waste streams; energy suppliers; contracting authorities in the renewable energy sector and financial enterprises – that are part of the supply chain for generating power from renewable sources.
- 2.16 All the operational stages, materials and services connected to the renewable energy supply chains fall within the scope of the Agreement. Circularity and end of life of wind turbines and solar panels also fall within the scope of application of the Agreement.
- 2.17 In line with the expectations of the OECD Guidelines and the UNGPs, the provisions of the Agreement shall bind any Company that signs the Agreement with respect to all its operations and supply chains of the designated renewable energy technology (i.e. wind turbines and/or solar panels).
- 2.17.1 At the signing of the Agreement, a Company may opt out of the international scope and choose to be only bound by the Agreement for its activities connected to the economic activities of the Companies in the European part of the Netherlands.<sup>1</sup>
- 2.17.2 The operations of Companies in the European part of the Netherlands, including their operations in its maritime areas with respect to the designated renewable energy technology shall at all times fall within the scope of the Agreement.

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<sup>1</sup> The due diligence monitoring will look at the entire supply chain of the concerned Dutch activity.

- 2.18 A list of the participating Companies and the scope of their operations bound by this Agreement shall be made publicly available on the website of the Agreement.
- 2.19 The monitoring of a Company's individual due diligence actions and other commitments following from the Agreement provisions shall be restricted to the specified scope agreed to with the Company as per articles 2.14 and 2.17 - 2.18 of this Agreement.
- 2.20 Individual Companies as well as (international) holdings can sign the Agreement.

### **Adhering Contracting Authorities and Renewable Energy Technologies Auction Platforms (CAPs)**

- 2.21 The Parties call for RBC standards to be taken into account in renewable energy public procurement and tender processes involving the national government and/or local authorities, with a view to stimulating and rewarding responsible corporate practices that respect human rights and environmental standards.
- 2.22 The Parties expect adhering Contracting Authorities and Renewable Energy Technologies Auction Platforms (CAPs)<sup>2</sup> to responsibly procure or facilitate the procurement of renewable energy technologies.
- 2.23 Adhering CAPs shall require the relevant business relations in the renewable energy sector to show their commitment to implementing due diligence in accordance with the UNGPs and the OECD Guidelines, and to taking actions to address potential and actual issues in the supply chains, for example, through a multi-stakeholder initiative like the Agreement.
- 2.24 Adhering CAPs shall require of their relevant business relations in the renewable energy sector:
- To commit to and implement the OECD Guidelines and the UNGPs throughout their own operations;
  - To perform human rights and environmental due diligence with respect to the procurement of renewable energy technologies in accordance with the OECD Guidelines and the UNGPs, and
  - To submit a report showing that they and their suppliers perform due diligence.
- 2.25 The Independent Secretariat shall make available to the adhering CAPs knowledge and expertise about the OECD Guidelines and the UNGPs to

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<sup>2</sup> The term "adhering Contracting Authorities and Renewable Energy Technologies Auction Platforms (CAPs)" refers to institutions that sign Appendix I of this Agreement specifically for this role.

support the latter in applying the international RBC standards in the (facilitation of) (public) procurement and tender of renewable energy technologies.

- 2.26 The adhering CAPs can seek information from the Independent Secretariat regarding the commitment and progress of a specific Company that is part of the Agreement with implementing the international RBC standards (taking into account the Confidentiality Protocol and relevant competition laws).
- 2.26.1 The Secretariat shall seek and attain the approval of the Company concerned before sharing the requested information with the CAP.
- 2.27 A CAP becomes an “adhering CAP” by signing a statement developed for this purpose accordingly (Appendix I).
- 2.27.1 No amendments shall be made to the role and expectations of the CAPs without their prior consultation and approval.

### Engaging relevant stakeholders

- 2.28 Other organisations (for example, international civil society organisations, knowledge institutions, labour unions, community level organisations and financial institutions) that are able and willing to contribute to addressing the actual and potential adverse impacts in the renewable energy sector as well as to creating a positive impact in the supply chains can apply to join the process, indicating the preferred role in the Agreement. (See Chapter 5 for the admission process to the Agreement)
- 2.28.1 The roles in the Agreement are “Parties”, “Supporting Organisations”, and “Adhering Contracting Authorities and Renewable Energy Technology Platforms”. Companies active in the renewable energy sector can only join the Agreement as “Parties”.
- 2.29 The Parties seek to engage with voices on the ground – including but not limited to impacted workers, local communities including indigenous peoples, environmental and biodiversity interest groups, human rights defenders, civil society organisations, community based organisations, consumers and end users – at the different tiers in the supply chain in tackling identified actual and potential adverse impacts.
- 2.29.1 The Parties shall discuss and decide on a plan of action for engaging with voices on the ground within 6 months after the Agreement has entered into force. The Civil Society Organisations shall lead this effort.
- 2.30 The Agreement shall build on and learn from other industry sustainability programmes, measures and initiatives in as far as these lessons contribute to a better or efficient implementation of the UNGPs and the OECD Guidelines and/or do not contradict the norms in these frameworks.

### Focus actions

- 2.31 To structure their efforts, the actions of the Parties shall focus on:
- Supporting and monitoring individual Company actions with regard to respect for human rights and environmental standards in accordance with the OECD Guidelines and UNGPs;
  - Undertaking collective projects to increase supply chain transparency, and address risks and impacts identified through individual and collective due diligence exercises;
  - Engaging in advocacy and public engagement efforts to raise awareness about the existence and benefits of the collaboration within the Agreement, and with the aim to increase the number of signatories internationally for amplifying the collective leverage of the group in the renewable energy sector.
- 2.32 The definition of the main terms used in this Agreement, as well as an overview of useful resources about RBC and due diligence can be found in Appendices II and III respectively.

### Annual Contribution Plans

- 2.33 Before the start of each Agreement year, each Party and Supporting Organisation shall develop and share a *contribution plan* with the Independent Secretariat using a template made available by the latter.
- 2.34 The contribution plan shall contain an overview of the concrete actions that the Party or Supporting Organisation commits to undertake in that specific year to support the goals and ambitions of the Agreement.
- 2.35 The contribution plan shall also include the nature and scale of (human) resources (e.g., staff time and other in-kind resources) that each Party and Supporting Organisation has reserved for executing the actions in the plan.
- 2.36 The yearly due diligence action plan (DDAP, see article 3.15) of Companies can be part of the Company contribution plan. Companies are also expected to include additional actions they shall undertake (e.g., participation in a Working Group or in a collective project) to support the collective ambitions in a given year in their annual contribution plan.
- 2.37 The Independent Secretariat shall make the content of the contribution plans available to the rest of the Parties and Supporting Organisations, taking into consideration the Confidentiality Protocol and competition regulations where applicable.

## 3 Individual Company and Collective Due Diligence

- 3.1 By signing the Agreement, the Companies commit to carry out risk-based due diligence as prescribed by the OECD Due Diligence Guidance for Responsible Business Conduct (the OECD Guidance).
- 3.2 The Parties mandate the Independent Secretariat and the Working Group on Due Diligence to develop the *Renewable Energy Sector Due Diligence Assessment Framework* (hereafter, the Assessment Framework) that will be used to determine and rate how Companies implement the six due diligence steps outlined in the OECD Guidance.
  - a. The Assessment Framework shall also include minimum expectations of the progress which the Companies are, ideally, expected to show in their due diligence efforts each given year.
- 3.3 The General Assembly shall approve the Assessment Framework before this is utilised by the Independent Secretariat for monitoring and assessing company due diligence performance.
- 3.4 The Parties agree to develop a private digital platform containing various tools and templates to be used to support and monitor the due diligence performance and progress made by the Companies (see for example article 3.7).

### Due diligence maturity assessment and improvement

- 3.5 The Independent Secretariat shall monitor, assess and advise individual Companies on their due diligence performance and progress.
- 3.6 Annually, the Companies shall complete a self-assessment due diligence questionnaire, based on the Assessment Framework, that will be used by the Independent Secretariat to assess and rate the due diligence maturity level of each Company. The self-assessment questionnaire is referred to as the Maturity Assessment Tool (MAT).
  - a. The MAT shall be developed by the Independent Secretariat in consultation with the Working Group on Due Diligence.<sup>1</sup>
- 3.7 The starting point for the Independent Secretariat for determining the maturity levels of the Companies shall be the OECD Guidance, that will be elaborated in the Assessment Framework described in article 3.2. of the Agreement.

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<sup>1</sup> The MAT of the Metals Agreement will be taken as a basis when developing the MAT of this Agreement.

- a. Once the Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive of the European Union are in place, the due diligence and reporting requirements of the Assessment Framework will be adjusted accordingly.
- 3.8 The maturity assessment, that will be conducted in the first implementation year of the Agreement, shall serve as the baseline for measuring the progress made by the individual Companies in the subsequent Agreement implementation years.
- 3.9 The Parties agree to the following assessment principles:
  - The Assessment Framework shall provide the scope for the assessment of the Companies by the Independent Secretariat in reasonableness and fairness.
  - The assessment of the Companies shall be as objective as possible; the key performance indicators and related evidentiary information that will be used to rate the performance of the Companies by the Independent Secretariat shall be specified in the Assessment Framework.
  - The information from the completed MAT (see article 3.7) shall provide the Parties with insight (at an aggregated level) into the due diligence maturity level of and progress made by the Companies from year to year.
  - The principle of continuous improvement is fundamental in the implementation of due diligence.
  - The Independent Secretariat shall provide the Companies with information and guidance to enable the latter to carry out the due diligence expectations (see, for example, article 3.12).
- 3.10 Annually, within 2 months after the maturity assessment – and using the results of the MAT – each Company shall share their individual company due diligence action plan (DDAP) with concrete targets to enhance their due diligence performance in accordance with the OECD Guidance for Responsible Business Conduct with the Independent Secretariat.
- 3.11 The Independent Secretariat shall advise and provide guidance to the Companies about their respective DDAP.
- 3.12 The Companies shall execute their annual DDAP in accordance with the objectives and timelines indicated therein.
- 3.13 The Companies shall inform the Independent Secretariat as to how they have implemented their DDAP and the outcome thereof a year after the development of the DDAP.
- 3.14 The Independent Secretariat shall aggregate and anonymise the individual Company maturity assessment results and the DDAPs for the Parties. The Parties shall use the aggregated and anonymised information to develop

and implement a collective due diligence support programme once they received this information from the Independent Secretariat.

- 3.15 The due diligence monitoring cycle shall cover the first four years of the Agreement implementation phase. The last implementation year of the Agreement shall predominantly be used for concluding and reporting on the general progress made with respect to, among other things, due diligence.
- 3.16 In consultation with the Companies, Industry Associations, Knowledge Institutions and Civil Society Organisations, the Independent Secretariat shall develop a list of sustainability initiatives to be acknowledged by the Agreement as suitable in enabling the Companies to comply with (certain elements of) the due diligence expectations (cross-recognition).<sup>2</sup>

### Help desk for due diligence related questions

- 3.17 The Independent Secretariat shall serve as a help desk to support the signatories with questions relating to the implementation of the international RBC standards, taking into account the available resources.
- 3.18 Adhering CAPs can also turn to the help desk with questions concerning the incorporation of RBC expectations in (public) procurement and tender procedures for wind and solar farms (permits).

### Additional points of attention

- 3.19 In conducting their due diligence, the Companies shall use an impact specific lens to understand how specific risks affect different individuals, groups, genders and natural ecosystems.
- 3.20 The Companies recognise the role of enabling rights for the promotion and realisation of other human rights in their risk prioritisation exercise. Enabling rights serve as fundamental conditions for the fulfilment of other rights. Freedom of association and the right to collective bargaining are examples of such enabling rights, as they can assist in the realisation of the right to earn fair wages and the prevention of the use of child labour.

### Supporting supply chain due diligence

- 3.21 The Parties shall support the Companies with their due diligence efforts<sup>3</sup> by:
- Organising collective workshops on due diligence and specific topics;

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<sup>2</sup> The Dutch Government reserves the right to abstain from contributing to the decision-making regarding cross-recognition of other sustainability initiatives, in light of its role in future due diligence legislation. The decision of the other Parties to the Agreement to cross-recognise other initiatives does not reflect the position of the Dutch Government with respect to the legitimacy nor the effectiveness or credibility of such initiatives.

<sup>3</sup> Subject to the availability of funding.

- Offering individual due diligence support - delivered by, e.g., the Independent Secretariat (for instance by advising on and reviewing the DDAP, and by providing guidance on the way forward, tailored to the specific context of a Company);
  - Organising collective dialogue sessions with stakeholders, e.g. suppliers upstream;
  - Developing supportive instruments<sup>4</sup>, including:
    - a. tools to collect and monitor the due diligence information from the Companies (such as the MAT);
    - b. information and tools for understanding and analysing the risks and impacts in the supply chains of the Companies;
    - c. due diligence policy, action plan and reporting templates.
- 3.22 To support the Companies with their due diligence, the Civil Society Organisations, Labour Unions and Knowledge Institutions – within their respective field of expertise – shall:
- Engage in dialogue and exchange with the Companies and other Parties about the most severe impacts and risks, and how these risks can be tackled. Information shared by Civil Society Organisations and Knowledge Institutions on the risks to specific groups is an important source for human and environmental rights risk assessments of vulnerable groups by the Parties. Within the confines of the confidential setting of the Agreement, Civil Society Organisations and Knowledge Institutions shall raise awareness amongst the Parties about the (potential) impacts of the Parties’ activities on, e.g., human rights in relation to (but not limited to) child rights, gender, biodiversity, conflict, land access, use and acquisition, migration, environment, employment, safety and security;
  - Advise on how to integrate the rights of marginalised groups, including women, indigenous peoples, migrant workers, human rights defenders, elderly, disabled persons and children, in company policies and processes;
  - Provide country-specific information and advice regarding biodiversity and ecosystem impacts, and the local context of marginalised groups, including women, indigenous peoples, migrant workers, human rights defenders, elderly, disabled persons and children; and for example, by conducting research and organising local stakeholder consultations;
  - Chair meetings of and conduct preparatory work for at least one Working Group;

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<sup>4</sup> The supportive instruments should provide an added value as compared to tools already used by the Companies in this regard.

- In partnership with the Independent Secretariat, contribute to collective learning of the sector through provision of training courses, workshops and other collective events (for instance through organising training courses on specific risk areas relevant to the renewable energy sector, sharing their knowledge and expertise in the collective events organised by the Independent Secretariat, etc.). At least three collective events are foreseen to take place.

### 3.23 The Government shall:

- Where appropriate, bring attention to the adverse impacts in renewable energy supply chains in bilateral contacts with other governments, including renewable energy technology producing countries, and urge them to act according to their ‘duty to protect’;
- Share information with the Parties about relevant (sector specific and general), sustainability policies and measures, as well as information about relevant EU policies and relevant potential supply chain risks whenever possible;
- Share best practices related to due diligence from other sector initiatives;
- Endeavour to incorporate RBC standards in tender procedures for wind permits and stimulate compliance of Companies with international RBC standards in the sector. In this regard the Parties welcome the ongoing pilot project being conducted by the Dutch Enterprise Agency (RVO) on the opportunities for incorporating international RBC requirements in the private sector instruments of the Dutch Ministry of Economic Affairs and Climate Policy.<sup>5</sup> The Parties are prepared to contribute to the pilot where needed.

### Sub-Working Group on tender and procurement processes

3.24 The Parties shall establish a multi-stakeholder sub-Working Group of this Agreement mandated to explore practical ways for the adhering CAPs to incorporate RBC requirements in procedures for wind and solar farms (permits) respectively.

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<sup>5</sup> Letter of the Dutch Minister of Economic Affairs and Climate Policy to Parliament about announcing the pilot project (in Dutch): [https://www.rijksoverheid.nl/documenten/kamerstukken/2021/06/15/kamerbrief-toepassing-imvo-op-ezkbedrijfsleveninstrumentarium#:~:text=Staatssecretaris%20Keijzer%20\(EZK\)%20meldt%20de,Zaken%20en%20Klimaat%20\(EZK\).](https://www.rijksoverheid.nl/documenten/kamerstukken/2021/06/15/kamerbrief-toepassing-imvo-op-ezkbedrijfsleveninstrumentarium#:~:text=Staatssecretaris%20Keijzer%20(EZK)%20meldt%20de,Zaken%20en%20Klimaat%20(EZK).)

- 3.25 The sub-Working Group shall submit its proposals to the Steering Committee of the Agreement within a period of 9 months after the Agreement has entered into force.
- a. Following the adoption of the proposals by the Steering Committee, the adhering CAPs shall provide a response to the Parties containing their position on the proposals, and steps they envisage to undertake to ensure their activities in the renewable energy sector promote and favour international responsible business conduct.
- 3.26 The mandate of the sub-Working Group can be extended by the Steering Committee if needed.
- 3.27 The Industry associations shall:
- Be responsible for the outreach to and for approaching industry actors in other European countries and beyond as well as their members to join this initiative and help with the development of proper due diligence practices;
  - Conduct information sessions for new companies regarding the Agreement;
  - Connect to other sectors to collect and share best practices and learnings with the Agreement Parties;
  - Connect with authorities and policy makers to embrace the efforts in this process;
  - Undertake initiatives for the improvement of specific sustainability issues;
  - Support and push for increased transparency in the sector;
  - Support policy and legislative developments that positively influence the implementation of this Agreement (for example: mandatory due diligence legislation);
  - Engage and work closely with the Parties when developing and/or modifying due diligence tools, with a view to identifying concrete avenues for collaboration, and to maximise the efficient use of resources for supporting company compliance with the OECD Guidelines and the UNGPs.

### **Transparency in the renewable energy sector supply chains**

- 3.28 The Independent Secretariat shall annually collect and update information from the Companies with the view to understanding the nature of and the

actors in the renewable energy supply chains and the issues present therein, on an aggregated level.<sup>6</sup>

- a. Such information concerns, for example, information about sourced materials and products, their origins, services used, supplier information, potential and actual negative impact connected to the company operations.
- b. The Companies commit to reasonably cooperate with the Independent Secretariat in sharing the necessary supply chain information to enable the Parties to gain insight into their collective supply chains.

- 3.29 The collection and analyses of the individual supply chain information shall be solely undertaken by the Independent Secretariat in line with the Confidentiality Protocol<sup>7</sup> of the Agreement as well as with the national and European competition rules and regulations.
- 3.30 The Independent Secretariat shall provide the Parties with the aggregated supply chain information for use in developing collective projects (see Chapter 4).

#### Due Diligence monitoring, assessment and advice

- 3.31 The Parties grant the Independent Secretariat authority in respect of the following tasks:
- To act as a source of information on due diligence matters and to provide feedback to the Companies for preparing their DDAPs (see article 3.12);
  - To organise training and support programmes for the Companies in the area of due diligence. This can be provided by Parties involved in the Agreement or by other experts;
  - To assist the Parties in developing tools and activities which will support the Companies with their due diligence efforts;
  - To assess the quality and the annual progress of the DDAP that the Companies prepare as part of their due diligence commitments. The criteria for assessing the action plans shall also be incorporated in the Assessment Framework;
  - To carry out random verification of the information supplied and improvements reported by Companies in relation to due diligence, through interviews and documentation review as proportionate to the purpose of the verification.
- 3.32 If the Independent Secretariat assesses the quality of a Company's due diligence efforts (e.g., based on the DDAP) as unsatisfactory, the latter will

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<sup>6</sup> This provision is subject, however, to commercial secrecy and sensitivity (e.g., to safeguard party anonymity and non-disclosure of commercial terms, proprietary information, etc.).

<sup>7</sup> The Confidentiality Protocol shall be signed by all the participants in the Agreement process.

be given the opportunity to prepare a modified plan based on the Secretariat's assessment within a reasonable period, generally two months.

- 3.33 Any dispute between the Independent Secretariat and a Company with regard to the quality of the latter's due diligence activities will be resolved through the intervention of the independent Renewable Energy Sector Complaints and Disputes Committee (see Chapter 7).

## 4 Collective Projects and Increasing Collective Leverage

### 4.1 Collective Projects

- 4.1 The Parties to the Agreement aim to tackle actual and potential adverse impacts and risks in the supply chains together by developing and implementing so-called “collective projects”.
- a. The activities that the Parties organise to support the Companies with their due diligence efforts individually do not fall under the term “collective projects” (see Chapter 3).

#### Initiating and implementing collective projects

- 4.2 Any Party to the Agreement can initiate a collective project and invite other relevant signatories to participate.
- a. A collective project requires the participation of a minimum of two Agreement signatories<sup>1</sup> (hereafter, *project parties*).
  - b. The project parties shall develop a draft project and budget plan using the set of (non-exhaustive) guiding questions outlined in Appendix IV as inspiration, and shall present the project and budget plan to the Working Group on Collective Actions and Increasing Leverage (CAI). The project plan for the collective project must include a protocol for monitoring and evaluation, and any appropriate measures to alleviate any competition law concerns.
  - c. The Working Group on CAI shall inform the General Assembly about a collective project plan submitted to it pursuant to article 4.2b above.
  - d. A collective project plan shall only be rejected by the General Assembly if such a project impairs or conflicts with the goals and spirit of the Agreement. Such a decision will be taken by the General Assembly by consent.
- 4.3 A Company is neither required to participate in nor to contribute to a collective project if the project is not linked to a salient issue identified in the supply chain of that company as a result of its due diligence exercise, or if the Company can provide the Working Group on CAI with a reasonable motivation for not participating.

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1 One of these organisations can be a signatory of another sector international RBC agreement.

- 4.4 The other Parties to the Agreement are also neither expected nor required to participate in or contribute to a project, but must provide a reasonable motivation for not participating if invited to do so.
- 4.5 The Steering Committee can be asked to intervene if a Party to the Agreement declines to participate in a project that is clearly linked to a salient issue connected to that Party. The final decision with respect to whether or not to participate in the collective project lies, however, with the individual Party.
- 4.6 The project parties are responsible for securing external<sup>2</sup> funding for collective projects if needed, in addition to in-kind contributions. Other Parties may contribute to efforts to mobilise resources for a collective project.
- 4.7 The project parties of the collective project shall monitor and report on the progress and impact of their respective collective projects.
- 4.8 The Independent Secretariat can make suggestions to the Working Group on CAI about opportunities for collective projects.
- 4.9 The Parties aspire to initiate a collective project before the third implementation year of the Agreement.
  - a. The industry association Holland Solar is committed to exploring the possibility of initiating a collective project on the issue of forced labour together with Solar Power Europe. This exploration will include alignment with enabling labour rights, freedom of association and the right to collective bargaining.
  - b. A collective project on a just transition will be explored.
  - c. Other projects will be explored as well.

#### Identification of collective projects

- 4.10 The Parties shall endeavour to undertake collective projects to address adverse impacts and risks in the industry supply chains following the identification and collective prioritisation of such risks and impacts.
- 4.11 As the scope of the Agreement includes all the nodes of the renewable energy supply chains (see article 2.16), collective projects can be selected for any part of the supply chain where a joint effort of Parties is deemed relevant and effective.
- 4.12 The Parties shall strive to conceptualise and implement projects based on the outcome of the individual and collective due diligence, such as:
  - a. *Specific supply chain projects*: These projects are directly linked to the supply chain of the Companies in the Agreement and are aimed at mitigating risks

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<sup>2</sup> Examples of external sources of funding for collective projects are the Funds for Responsible Business Conduct executed by the Dutch Enterprise Agency (RVO). See <https://business.gov.nl/subsidy/fund-for-responsible-business/>

that have been identified in the supply chain which Companies are not able to solve on their own. These projects could target actors such as States and suppliers at the mining level, collectors and processors of secondary materials, refiners/smelters and/or traders, manufacturers and assemblers, dismantling Companies, recyclers, etc.

- b. *General supply chain projects*: These are projects that are not directly linked to risks that have been identified in the supply chain, but do seek to positively contribute to human rights and environmental issues surrounding all nodes in the supply chain of the renewable energy sector. These projects can relate to joint solutions for general challenges in the sector, such as:
    - Projects aimed at increasing transparency in the supply chain, which seek to increase insight into and understanding about the nature and context of the renewable energy sector supply chains on a broad scale;
    - Projects related to increasing circularity and the efficiency of materials;
    - or
    - Projects related to gaining effective access to remedy for adverse impacts at the local level.
  - c. *Awareness raising, capacity building and leverage-increasing activities*: These are activities that raise awareness and/or build the capacity of relevant stakeholders – such as workers, suppliers, affected individuals and communities (including indigenous groups), consumers, sector initiatives and industry associations – to combat supply chain issues. Such projects also include activities to raise the awareness of relevant stakeholders about the existence of the Renewable Energy Sector Complaints and Disputes Committee.
  - d. *Joint fact-finding projects*: These concern research activities that aim to generate new knowledge and information about the context of and issues in the renewable energy sector. The output of a joint fact-finding project can serve as a basis for the development of other types of projects.
- 4.13 The identification of risks and adverse impacts can surface from individual due diligence and collective due diligence.
- a. Individual due diligence: Parties commit to identify collective risks for further action based on the individual due diligence action plans (DDAPs) that will be developed by Companies as part of their due diligence efforts;
  - b. Collective due diligence: Parties commit to engage in collective due diligence such as collective fact-finding with the aim to identify industry hotspots and challenges in the renewable energy supply chain.
- 4.14 A collective prioritisation exercise shall be used to select themes for a collective project at the sector level. This will be done using the methodology

advised by SHIFT<sup>3</sup>, which is grounded in the OECD Guidelines and the UNGPs. The method<sup>4</sup> includes criteria such as severity, likelihood, prevalence and situations with limited individual leverage.

- 4.15 The Civil Society Organisations and Knowledge Institutions commit to contribute to collective projects by bringing in their specific expertise on issues such as, but not limited to, gender, (enabling) labour rights, land rights, environmental and biodiversity impact, circular economy, greenhouse gas emission, human rights due diligence, including assessment methodologies, fact-finding and participatory processes.

### Increasing Collective Leverage

- 4.16 The Parties aim to increase the number of signatories to the Agreement, as an increase in the number of signatories shall augment the influence that Parties can exert on the conditions under which the renewable energy sector operates.
- 4.17 The Working Group on CAI shall annually (within three months of the commencement of the Agreement year) present an outreach plan to the Steering Committee, that also includes the division of responsibilities with regard to outreach to potential signatories and other relevant organisations. In its annual progress report, the Working Group shall also integrate information about the progress made in implementing the outreach plan of a given year (see Chapter 6).
- 4.18 The Parties shall strive to achieve positive impact worldwide, and shall approach relevant (international) renewable energy organisations in their outreach efforts. These organisations include, but are not limited to, mining companies, original equipment manufacturers, energy companies, national governments and local (non-profit) organisations.
- 4.19 In addition to increasing the number of signatories, the Parties shall engage with other relevant sustainability initiatives. The purpose of the engagement is to share learnings, and identify opportunities to prevent the duplication of efforts without prejudice to the Agreement's commitment to implementing the OECD Guidelines and the UNGPs.
- 4.20 All Parties commit to:
- Act as an advocate for the Agreement in their respective networks;

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<sup>3</sup> Shift is an independent, non-profit centre for business and human rights practice. It is staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights.

<sup>4</sup> See, Shift, Exploring the concept of prioritization: An Explanatory Note For The Dutch Sector Covenant Process, 2016 [http://shiftproject.org/wp-content/uploads/2020/06/Shift\\_NoteonPrioritizationforSER\\_Feb2016.pdf](http://shiftproject.org/wp-content/uploads/2020/06/Shift_NoteonPrioritizationforSER_Feb2016.pdf)

- When appropriate, encourage relevant partners in their network to sign the Agreement;
  - Inform each other about relevant developments in other initiatives and signal opportunities for alignment or other forms of cooperation;
  - Cooperate with other relevant International RBC sector Agreements being implemented or developed where relevant, such as with the Metals Agreement or the financial sector RBC Agreements.
- 4.21 The Companies commit to using their leverage in the (renewable energy) supply chains to inform suppliers and other relevant partners about the Agreement and, when appropriate, encourage them to sign the Agreement.
- 4.22 The Knowledge Institutions and Civil Society Organisations commit to use their (international) networks to bring in the perspectives of stakeholders on the ground – such as local NGOs, communities, labour unions and local public authorities – to ensure that collective projects have added value for both local stakeholders, as well as Parties to the Agreement.
- 4.23 The Industry Associations commit to:
- Actively recruit new Companies to sign the Agreement;
  - Actively inform their members about the Agreement and, when appropriate, encourage the latter to sign the Agreement;
  - Align on-going efforts on supply chain responsibility with those of the Agreement.
- 4.24 The Government commits to:
- Using its influence in the European Union to raise awareness about the importance of a European approach to responsible business conduct in supply chains;
  - Actively encourage embassies to assist the Companies of this Agreement that are located in the Netherlands and/or with activities related to the Dutch Renewable Energy supply chain to implement their policy on international RBC, mainly by providing information on RBC within the local context.<sup>5</sup> Where needed and possible, an embassy shall act as an intermediary with local authorities and other stakeholders for the purposes of realising a collective ambition of this Agreement;
  - Reaching out to other governments to join the Agreement upon the request of non-Dutch participating Companies that express their desire to have their respective governments enter into this Agreement.
- 4.25 The CAPs and Supporting Organisations commit to utilise their platforms to promote the Agreement.

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<sup>5</sup> The Dutch embassies do not have the capacity or the mandate to support Companies outside this scope.

### Internal and external communication

- 4.26 Companies and Industry Associations shall actively contribute to the external communication of the Agreement, such as the organisation of events and the preparation and dissemination of communication materials.
- 4.27 Within one month after signing the Agreement, the Parties shall put information about the Agreement and their participation in the process on their website.
- 4.28 Within one month after signing the Agreement, the Companies shall inform their staff and management – and within six months their major external business relations – that the Agreement has been concluded, that they endorse its objectives and that they will pursue the activities described in this Agreement that fall within the scope of their organisation.
- 4.29 The Steering Committee shall oversee joint communications about the Agreement.
- 4.30 The Independent Chairperson shall act as the spokesperson for the Agreement. If agreed upon in the Steering Committee, a designated Party can communicate on behalf of all the Parties.
- 4.31 During its first meeting, the Working Group on CAI shall install a communications subcommittee that shall be responsible for developing and executing actions relating to internal and external communication about the Agreement and its deliverables. This subcommittee shall work closely with the Independent Secretariat.
- 4.32 Within six months after the Agreement enters into force, the communications subcommittee shall present a collective communication strategy containing the objectives and processes for internal and external communication about the progress being made within the Agreement process.
- 4.33 Within their respective organisations, each Party shall appoint a communication contact person who can be contacted to contribute to the development and implementation of the communication strategy.
- 4.34 Individually, the Parties can communicate externally in a constructive way about the Agreement in observance of the provisions of the Confidentiality Protocol.
  - a. The Parties are expected to inform the Independent Secretariat about pending publications that relate to the Agreement. When such publications concern other Parties to the Agreement, the latter must be given prior opportunity to respond to the publication.

4.35 The Industry Associations shall regularly update their members about the Agreement and its deliverables through online and offline communication channels.



## 5 Governance and Implementation

- 5.1 In accordance with the *SER Advisory Report for International Responsible Business Conduct Agreements*, the multi-stakeholder nature of this Agreement is reflected in its diverse participants: companies, government, industry associations, knowledge institutions, civil society organisations and labour union(s).<sup>1</sup>
- 5.2 The ownership of the Agreement and decision-making power lies collectively with the organisations that sign the Agreement as Parties.
- 5.3 An overview of the governance structure of the Agreement can be found in Appendix V.

### Compliance with competition law

- 5.4 The sharing and exchange of information between the Parties in the context of the Agreement, including but not limited to information generated from collective projects, will be done in compliance with all relevant national and European law, including competition laws.
  - a. The Parties confirm that they shall not exchange commercially sensitive information with each other or reach any agreement or understanding that would breach applicable competition laws.
  - b. In situations where the sharing of commercially sensitive information is deemed necessary with a view to realising the goals of the Agreement, the concerned Parties shall share the information with the Independent Secretariat. The latter shall anonymise and aggregate the information before sharing this with the other Parties, in accordance with the Confidentiality Protocol.
  - c. The Independent Secretariat shall organise a training session about the relevance and application of competition law for the implementation of the Agreement for all signatories within 4 months after the Agreement has entered into force. New signatories to the Agreement shall be briefed about the competition law expectations in the Agreement during their onboarding.
- 5.5 A declaration of compliance with competition law will be read and agreed to by all present at the beginning of the meetings of the Parties.

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<sup>1</sup> A critical condition for the Dutch Government to participate in this Agreement is the participation of at least one NGO and one labour union as Parties to the Agreement at any point in time.

## Implementation

- 5.5.1 In the implementation of the Agreement, Directive (EU) 2015/1535 on technical regulations and rules on information society services (codification) and Directive 2006/123/EC on services in the internal market will be taken into account.

## The different roles in the process

- 5.6 There are three types of signatories involved in the Agreement:
  - a. *Party*: An organisation that signs the Agreement with the intention and commitment to actively contribute to the realisation of the goals and ambitions of the Agreement. The Parties share knowledge, data and expertise with each other and shall have access to the knowledge and tailor-made (due diligence) instruments they develop together.
  - b. *Supporting Organisation*: An organisation that subscribes to the spirit, goals and ambitions of the Agreement and commits to actively promote the Agreement on its platform and among the members of its network (with the aim of increasing sign-on) and to contribute to collective actions where possible. A Supporting Organisation may also make financial contributions to the Agreement to support a specific activity. Supporting Organisations do not participate in decision-making in the Agreement. A renewable energy company shall not be admitted to the Agreement as a supporting organisation.
  - c. *Adhering Contracting Authorities and Renewable Energy Technologies Auction Platforms (CAPs)*: Institutions and organisations that have signed Appendix I of the Agreement with a view to incorporating the international RBC standards in their own (public) procurement strategies and/or with respect to the facilitation of the purchasing of renewable energy technologies by consumers.
- 5.7 Experts can be invited or contracted (on an ad hoc basis) to provide knowledge and specific expertise to the Parties and Supporting Organisations upon request (and within the boundaries of the Confidentiality Protocol of the Agreement).

## The constituencies

- 5.8 The Agreement Parties are grouped into six constituencies:
  - a. *Companies*: These constitute renewable energy sector actors and affiliates that engage in commercial activities including but not limited to: raw materials extracting, processing and producing companies; semi-product manufacturers; original equipment manufacturers; producers,

- distributors and installers of wind turbines and solar panels; companies involved in decommissioning renewable energy technologies and processing waste streams, and energy companies.
- b. *Industry Associations*: A collaborative body representing several private actors (incl. Companies) active in the renewable energy sector at national, regional or international levels.
  - c. *Civil Society Organisations*: Non-profit organisations that promote a specific theme or agenda in the renewable energy sector, for example, NGOs.
  - d. *Labour unions*: Organisations the membership of which is made up of workers, represented by union leaders, united to protect and promote their common interests.
  - e. *Knowledge Institutions*: Institutions that through research, partnerships, collaborations and dialogue facilitation generate information and tools and provide training courses that create a better understanding about the context and state of affairs of the renewable energy sector, and/or about the (application of the) international RBC frameworks, including issues such as due diligence and impacts on groups at risk.
  - f. *Governments*: Public bodies/institutions that sign the Agreement as a Party, such as the Minister for Foreign Trade and Development Cooperation, Liesje Schreinemacher, acting in the capacity of governing body, and the Minister for Climate and Energy Policy, R.A.A. Jetten, acting in the capacity of governing body.
- 5.9 Organisations that may not directly fall within the abovementioned definitions but are relevant for achieving the goals of the Agreement may be admitted to the Agreement based on their merits. The Steering Committee shall assign the organisation to an existing constituency that best fits with the nature of that organisation or propose the creation of a new constituency to the General Assembly for a final decision.

### Governance structure

- 5.10 As of the date that the Agreement enters into force, the Parties together shall become the General Assembly.
- 5.11 The Parties shall appoint the members of the Steering Committee and install relevant Working Groups before the signing of the Agreement. The mandate of the Steering Committee and the Working Groups shall be applicable as of the date the Agreement enters into force.
- 5.12 All decision-making in the Agreement – with the exception of the ruling of the complaints and dispute settlement committee – shall, in principle, be based on consent.

### General Assembly

- 5.13 The General Assembly is the highest decision-making body in the implementation phase of the Agreement and shall have the final say in all matters pertaining to the implementation of the Agreement. These include but are not limited to:
- a. Determining appropriate strategic agendas for securing the effective realisation of the ambitions of the Agreement;
  - b. Approving the annual budget for the implementation of the Agreement drafted by the Independent Secretariat in consultation with the Steering Committee;
  - c. Mandating the Steering Committee to initiate and see to the execution of the independent mid-term evaluation;
  - d. Admitting new signatories to the Agreement and taking a decision to terminate the membership of non-performing organisations following the designated procedures (see 5.50 and following);
  - e. Approving draft progress reports for publication;
  - f. Proposing and approving amendments for the Agreement text.
- 5.14 The General Assembly can delegate specific actions to the Steering Committee and/or explicitly mandate the latter to act on its behalf in certain matters.
- 5.15 Supporting Organisations may be invited to participate in General Assembly meetings by the Parties but shall not partake in the decision-making in the General Assembly.
- 5.16 Each Party shall nominate at least one representative for the General Assembly as well as a designated substitute from that organisation.

### Steering Committee

- 5.17 The Steering Committee is responsible for governing the implementation of the Agreement within the limits set by the General Assembly.
- 5.18 The Steering Committee's responsibilities include:
- a. Developing an annual plan for the implementation of the Agreement with short and long-term goals;
  - b. Drafting annual budgets for the implementation of the Agreement together with the Independent Secretariat and in consultation with respective Working Groups (using the budget developed in the negotiations phase of the Agreement as starting point);
  - c. With the support of the Independent Secretariat, monitoring the Parties' adherence to the Agreement;
  - d. Monitoring the progress made within the different Working Groups and instructing Working Groups to undertake specific actions where needed;

- e. Generally overseeing the communication about the Agreement;
  - f. Preparing progress reports;
  - g. Proposing the installation and dissolution of Working Groups;
  - h. Making proposals to the General Assembly in relation to matters not foreseen in this Agreement but which are of relevance for achieving the collective ambitions;
  - i. Proposing the admittance of new organisations and dismissal of non-performing Parties;
  - j. Deciding on a request of the Independent Secretariat to submit a dispute with a company to the independent complaints and dispute settlement committee (see Chapter 7);
  - k. Other actions mandated by the General Assembly.
- 5.19 The constituency representation of the Steering Committee is as follows:
- a. Industry Associations: two representatives (one representative of the wind energy market and one of the solar energy market)
  - b. Companies: two representatives (one representative of the wind energy market and one of the solar energy market)
  - c. Government: two representatives (one representing the Minister for Foreign Trade and Development Cooperation and the other representing the Minister for Climate and Energy Policy)<sup>2</sup>
  - d. Civil Society Organisations and Knowledge Institutions: one representative
  - e. Labour Unions: one representative
- 5.20 The Steering Committee can propose to the General Assembly that the constituency representation (as provided for in article 5.19) be adapted to a given (new) context of the Agreement process.
- 5.21 In addition to the permanent members of the Steering Committee, each constituency shall nominate a substitute who shall replace a respective permanent member when needed.
- 5.22 The permanent members of the Steering Committee are responsible for keeping their respective substitutes informed and updated about developments in the Steering Committee.
- 5.23 The Steering Committee members shall be appointed by the constituency that they represent by consent.

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<sup>2</sup> Based on the nature of a specific Steering Committee meeting agenda, the Government shall inform the Independent Secretariat in a timely manner whether it will be represented by one or two persons in the Steering Committee meeting concerned.

- 5.24 Participation in the Steering Committee is on behalf of the constituency the particular individual represents, and not on behalf of their respective or affiliated organisation.
- 5.25 If for any reason an appointed Steering Committee member is no longer able to participate in the process, the constituency retains the right to collectively appoint another permanent representative and/or a substitute.
- 5.26 Steering Committee members are expected to consult with the members of their constituency to gather input for each Steering Committee meeting and decision.
- 5.27 A vote or proposal by a Steering Committee member (or its substitute) shall be deemed as having the approval and backing of all the members of the constituency concerned.
- 5.28 A Steering Committee member can only be dismissed by the constituency they represent.
- 5.29 A rotation schedule for the Steering Committee membership shall be decided by the General Assembly at its first meeting.
- 5.30 The Steering Committee shall decide upon and structure its own working processes, including the number of meetings per year, taking into account the available resources.
- 5.31 The General Assembly shall amend the seating structure of the Steering Committee if the number of participating organisations in the Agreement warrant such an amendment.
- 5.32 Each constituency has 2 of a total of 10 votes.
- a. In exceptional circumstances, where the Steering Committee is unable to reach a decision on the basis of consent, decision-making will be by 80% of the votes – derogating from article 5.12.
  - b. The derogation from article 5.12 is not applicable during decision-making concerning budgetary issues.

### **Independent Secretariat**

- 5.33 The Private Parties<sup>3</sup> and CAPs in the Agreement have requested the Dutch Social and Economic Council (SER) to host the Independent Secretariat that shall support and facilitate the implementation of the Agreement. An overview of the tasks of the Independent Secretariat can be found in Appendix VI.

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3 This consists of all the constituencies in the Agreement with the exception of the Government.

- 5.34 The obligations and mandate of the Independent Secretariat are laid down in this Agreement, and in the separate Agreement to Perform Services with the SER (*Assignment Agreement*) that shall be signed by the Private Parties and CAPs.
- 5.35 The Independent Secretariat is, in addition, mandated to objectively monitor (and report to the Steering Committee about) how individual signatories are meeting their obligations following from the Agreement.
- 5.36 The Independent Secretariat shall draft an annual budget for the implementation of the Agreement and present this to the Steering Committee.
- 5.37 The Independent Secretariat shall monitor and inform the Parties about relevant external developments relating to international responsible business conduct, and make its expertise on the implementation of international RBC agreements available to the Parties.
- 5.38 The Independent Secretariat will aggregate and anonymise any commercially sensitive information from the Companies so that this information can be shared with the other Parties in compliance with competition law and regulations.

#### Independent Chairperson

- 5.39 The Parties shall appoint an Independent Chairperson to chair the General Assembly and the Steering Committee.
- 5.40 The profile and tasks of the Independent Chairperson shall be clearly defined by the Steering Committee before the appointment of the Independent Chairperson.
- 5.41 The Independent Chairperson shall act as the principal spokesperson of the Agreement on behalf of the Parties.
- 5.42 The Independent Chairperson shall be appointed for the whole duration of the Agreement. The Steering Committee may request the Independent Secretariat to organise a performance evaluation of the Independent Chairperson at its discretion.
- 5.43 The appointment of the Independent Chairperson can be terminated with one month's notice owing to poor performance or due to budgetary considerations per decision of the Steering Committee to this effect.

#### Working Groups

- 5.44 The General Assembly shall install two Working Groups at the beginning of the implementation phase:
  - a. The Working Group on Due Diligence (WG DD) with the responsibility: to develop due diligence tools and templates together with the Independent

Secretariat; to distil lessons and areas for collective due diligence based on the analyses and reports of the Independent Secretariat; and to ensure the alignment of the process with recognised international due diligence processes and guidelines together with the Independent Secretariat. The mandate of the Due Diligence Working Group is further specified in Chapter 3 of the Agreement.

- b. The Working Group on Collective Actions and Increasing Leverage (WG CAI), which is mandated to undertake actions to recruit new Parties and to initiate, implement and support collective projects. The mandate of this Working Group is laid out in, inter alia, Chapter 4 of the Agreement.
- 5.45 The Steering Committee can propose the installation of new working groups or the dissolution of existing working groups to the General Assembly, presenting clear reasons for this proposal, taking into account the goals of the Agreement and the availability of resources.
- 5.46 Each working group shall develop an annual time-bound work plan for its activities.
- 5.47 All the Parties are encouraged to participate in and/or actively contribute to at least one working group during the duration of the Agreement.

#### **Duration**

- 5.48 The Agreement has a duration of five years from the date it enters into force. The cycle of activities outlined in this Agreement is limited to the first four years of the implementation phase. The fifth Agreement year shall be used to complete ongoing activities following from the fourth year, unless the outcome of the consultation as per article 5.49 below indicates otherwise.
- 5.49 The Agreement shall enter into force on the first day of the month following the signing of the Agreement.
- 5.50 The Parties shall consult with each other about the continuation of this Agreement no later than nine months before the expiry date of the Agreement. If no decision is made to continue, the Agreement will end after the expiry date.

#### **Accession to the Agreement**

- 5.51 Organisations that subscribe to the goals of the Agreement and want to make a contribution to its achievement shall inform the General Assembly of their intentions, their reasons and expected contribution.
- 5.52 A request to join the Agreement must be assessed by the Steering Committee.

- 5.53 Upon approving the accession application, the Steering Committee shall propose to the General Assembly to admit the acceding Party.
- 5.54 The application of an organisation willing to commit to the obligations in the Agreement can only be denied in the event that admission will seriously impair the spirit and ambitions of the Agreement.
- 5.55 New Parties shall become bound by the Agreement from the first day of the month following the date they sign the Agreement.

### Termination of participation in the Agreement

- 5.56 A signatory of the Agreement can terminate its participation in the Agreement with a written termination notice to the General Assembly indicating the reason(s) for termination.
  - 5.56.1 The Government reserves the right to withdraw as a Party from the Agreement, if during the implementation period of this Agreement legislation is adopted whereby the Government's role would conflict or would be incompatible with the content of its role or its participation as laid out in this Agreement. In case the Government stops being a party to the Agreement due to incompatibility with the adopted legislation, it will continue to financially support the Agreement. With a view to implementing the Agreement during the agreed duration of five years, any potential financial implications for the budget will be reassessed and discussed in the Steering Committee prior to adaptation of the Agreement's budget for the remaining year(s). The final amount of the financial contribution may depend on 1) the Foreign Trade and Development Cooperation budget; and 2) the legal framework, regulations and procedures in this context. If the Government's financial budget has not yet been established or approved, it could be developed subject to sufficient funds being made available. The governance structure of the Agreement would need to be adjusted to reflect the Government's role as subsidy provider.
- 5.57 The termination notice should be received by the Independent Secretariat at least six months before the end of the implementation year of the Agreement. For the Company and CAPs, the failure to meet this notification deadline shall result in the obligation to pay the financial contribution owed in the next implementation year of the Agreement.
  - 5.57.1 The six months' notice period does not apply to the Civil Society Organisations, Labour Unions and Knowledge Institutions. Their participation in the Agreement shall be terminated from the date the written notice is received by the Independent Secretariat.

- 5.58 The General Assembly will make the termination public.
- 5.59 Where a Party terminates its participation in the Agreement, its obligations following from this Agreement cease with effect as of the beginning of the next Agreement year.
- 5.60 When a Party terminates its participation in the Agreement, the Agreement shall remain in force for the other Parties to the Agreement, insofar as the content and scope do not dictate otherwise.

#### **Termination of the Agreement towards non-compliant organisations**

- 5.61 If a decision of the General Assembly regarding non-compliance with the provisions of this Agreement (see Chapter 7), is not followed up by the signatory concerned within the period determined by the General Assembly, the General Assembly will hold a meeting with this signatory and may, as a last resort, terminate the Agreement towards the non-compliant signatory. The non-compliant signatory shall not participate in the decision-making of the General Assembly on this subject.
- 5.62 A decision to terminate the Agreement towards a non-compliant signatory must be taken by the consent of all the Parties (excluding the non-compliant signatory) present at a prescheduled General Assembly meeting, and shall be with immediate effect.
  - a. In the situation where the Parties are unable to agree on whether or not to expel a non-compliant signatory by consent, approximately 75% of the Parties must vote in favour of the expulsion for it to have effect.
- 5.63 The General Assembly will inform the signatory in question that all the Parties are terminating the Agreement in relation to that signatory and that it can no longer derive any rights or privileges from the Agreement, nor may it continue to publish about participating in the Agreement.
- 5.64 The Steering Committee will publish a statement on the website of the Agreement announcing the termination of the Agreement towards a non-compliant signatory and the reason therefore.

#### **Dealing with non-performing adhering CAPs and Supporting Organisations**

- 5.65 The Steering Committee shall engage one-on-one with adhering CAPs and Supporting Organisations that are determined to be non-performing by the Independent Secretariat. The objective of the engagement is to understand the reasons for non-performance and to reach an understanding on how the concerned entity can meet the expectations in the Agreement.
- 5.66 The Steering Committee can refer an adhering CAP or Supporting Organisation to the General Assembly if the engagement, as referred to

in article 5.65, does not lead to an improvement of performance for the Steering Committee.

- 5.67 If the General Assembly deems the performance of the Supporting Organisation or adhering CAP to be inadequate as compared to the expectations in the Agreement, the non-performing entity shall be given a reasonable timeframe to correct (improve, rectify) their performance.
- a. Failure of a CAP or Supporting Organisation to correct their action and act in compliance with the Agreement within this timeframe shall result in a decision by the General Assembly to terminate their engagement in the Agreement. The entity concerned shall, following this, no longer derive any rights or privileges from the Agreement, nor may it continue to publish about participating in the Agreement.

#### Financing the Agreement

- 5.68 The budget and financing of the implementation of the Agreement is based on a five-year budget estimate that has been agreed to by the Parties before they signed the Agreement.
- 5.69 The Companies and adhering CAPs are expected to contribute financially to the budget of the Agreement.
- 5.70 The financial contribution committed to by the Dutch Government in the negotiations phase is a fixed amount based on the initially agreed percental division of costs. The Government shall not increase or decrease the absolute amounts it has committed to.
- 5.71 New Companies shall be expected to contribute fully to the costs associated with their participation in the Agreement.



## 6 Monitoring and Evaluation

- 6.1 The Parties acknowledge the relevance of regularly monitoring and evaluating their multi-stakeholder collaboration and the progress being made with realising the Agreement goals.
- 6.2 The outcome and lessons from monitoring and evaluation efforts shall be used to improve the various implementation processes.
- 6.3 The Parties shall devise a “traffic light system” that reflects the extent to which each Party, Supporting Organisation or adhering CAP has met its commitment in a given period.
- 6.4 The Parties reaffirm that it is part of their individual and collective responsibilities to actively monitor each other’s efforts, and where needed to bilaterally and collectively call upon non-performing Parties to account for not delivering on their commitments.

### Annual progress report

- 6.5 The annual progress report is a publication that provides general insight into the efforts and progress made by the Parties and shall not contain information traceable to a specific company. The General Assembly shall approve the final version of the draft annual progress report before publication.
- 6.6 The evaluation of the activities and results of the Agreement shall be done both on the level of individual signatories, as well as with respect to the collective actions.
- 6.7 The annual progress report shall, among other things, include information gathered from the following sources:
  - a. Individual annual report of each signatory on how it has contributed to achieving the overall goals of the Agreement in a given year;
  - b. An aggregated and anonymised report of the individual due diligence assessments of the Companies drafted by the Independent Secretariat;
  - c. Reports of the working groups and the Steering Committee respectively about the collective goals they realised in a given year;
- 6.8 The annual progress report shall be published within three months after the end of each Agreement implementation year.
- 6.9 The final annual progress report shall be that concerning the fourth year of the Agreement, unless there is an explicit decision to extend the Agreement after year 5 and the necessary resources are secured for this.



# 7 Accountability Mechanism

## General provisions

- 7.1 The Parties acknowledge the importance of having an arbitration mechanism in place to resolve disputes, and to address complaints from third parties regarding the actions or omissions of a Company that (may) have resulted in adverse impacts.
  - 7.1.1 In this context of the Agreement, a *dispute* entails:
    - an issue between the Independent Secretariat and a Company following from the exercise of the due diligence monitoring mandate of the Independent Secretariat.
  - 7.1.2 In the context of the Agreement, the term *complaint* refers to an issue between a Stakeholder (or its mandated representative) and a Company of the Agreement concerning an injury, loss or (environmental) damage of material significance suffered individually by a Stakeholder or a group to which the Stakeholder belongs, due to a violation of an RBC agreement.
- 7.2 To this end, the Parties shall establish an operational, independent Renewable Energy Complaints and Disputes Committee (RECDC) no later than one year after the Agreement has entered into force. The RECDC has the mandate to decide on the merits with respect to the compliance of a Party with the provisions of this Agreement, and in relation to the (correct) application of the OECD Guidelines and UNGPs by a Company.
- 7.3 The rules of procedure of the RECDC are outlined in Appendix VII.<sup>1</sup>
- 7.4 The terms of reference for the profile of the independent members of the RECDC shall be developed by the Steering Committee and approved by the General Assembly before the appointment of the members.
- 7.5 The RECDC rules of procedure shall at all times be aligned with Principles 30 and 31 of the 2011 UN Guiding Principles on Business and Human Rights (“Effectiveness criteria for non-judicial grievance mechanism”). In the case of discrepancy between the RECDC rules of procedure, Principles 30 and 31 of the UNGPs shall prevail.<sup>2</sup>
- 7.6 To achieve economy of scale and in order to maximise the efficiency and effectiveness of the RECDC, the Parties and the RECDC shall collaborate with

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1 The Parties shall review and if necessary amend the rules of procedure should the requirement of the (upcoming) sustainable corporate governance legislation at the EU level warrant this.

2 [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

and learn from existing grievance mechanisms, including those established by other international RBC sector agreements.

- 7.7 The Parties commit to raise awareness about the Renewable Energy Complaints and Disputes Committee in their business relations and networks, through, for instance, actively informing supplier companies, labour unions and worker representatives, disseminating information materials, etc. The Parties may also choose to start a collective project to this end.
- 7.8 The RECDC shall issue an arbitral award as speedily as possible, but in principle within six months, on any complaints and disputes submitted to it.
- 7.9 The RECDC will reach its decisions by a majority of votes, prescribing recommendations for further action.
- 7.10 The arbitral award of the RECDC on both disputes and complaints shall be binding for Parties involved in the dispute or complaint process.
- 7.11 The RECDC shall consider the recommendations of a National Contact Point for the OECD Guidelines in a specific instance in deciding and ruling on a complaint.
- 7.12 The Independent Secretariat shall monitor the compliance of disputing Parties with the award of the RECDC.
- 7.13 The other Parties in the Agreement can collectively terminate the Agreement towards another Party for culpable failure to comply with the award and/or binding recommendations of the RECDC (see Chapter 5.61).
- 7.14 Disputes relating to the financial obligations of the Companies do not fall within the mandate of the RECDC and shall be settled using the dispute settlement mechanism provided for in the Assignment Agreement with the Independent Secretariat of the Agreement.
- 7.15 The Steering Committee shall evaluate the operation of the arbitration mechanism two years after it has come into effect.
- 7.16 The arbitration mechanism and process is visualised in Appendix VIII.

#### **Additional provisions in relation to access to remedy**

- 7.17 Each of the Companies is expected to have an early warning system and a local internal grievance mechanism in place.
- 7.18 The Companies are to open up their early warning system or (local) internal grievance mechanisms to third parties who may have complaints or information about alleged violations of the OECD Guidelines and the UNGPs connected to the activities or business relations of the Companies.
  - 7.18.1 Additionally, the Companies commit to cooperating in good faith with legitimate remediation mechanisms, including but not limited to the

REDCDC, through which stakeholders and rights holders can raise complaints and seek to have them addressed with the Company.

- 7.19 The Companies shall strive to align their individual early warning systems or internal grievance mechanisms with UNGPs 22, 29 and 31.
- 7.20 The accountability mechanism described in this chapter is without prejudice to the mandate of the NCPs to assist in resolving issues pertaining to the application of the OECD Guidelines that arise in specific cases.
- 7.21 Each Company commits to participate in an NCP mediation process in good faith should a complaint against it be deemed admissible by an NCP and shall adhere to any recommendations the NCP may issue in a specific instance.<sup>3</sup> However, this does not change the mandate of the NCP nor the procedure of handling specific instances by the NCP.

#### Resolving disputes involving Parties and/or Supporting Organisations

- 7.22 Disputes involving Parties or Supporting Organisations in relation to the fulfilment of the commitments laid down in this Agreement (or lack thereof) will first be resolved by those involved (disputing organisations) bilaterally.
- 7.23 If the bilateral discussions to resolve the dispute fail (in the view of one or all disputing organisations), the dispute shall be submitted to the Steering Committee in writing.
- 7.24 The disputing organisations shall provide the Steering Committee with the necessary information for a proper assessment of the facts as soon as possible, but in any event no later than ten working days after the Steering Committee has been notified of the dispute.
- 7.25 If one or more of the disputing organisations is/are unable to provide the necessary information within this period, the organisation(s) in question may request the Steering Committee for a postponement. The organisation(s) in question can be granted a postponement of three weeks to provide the necessary information, unless the Steering Committee decides otherwise.
- 7.26 Within fifteen working days of receiving all required information, the Steering Committee will initiate a dialogue with the disputing organisations and can invite other Parties or external organisations to participate in this dialogue.
- 7.27 The Steering Committee should be able to make its assessment of the dispute freely and may convene a meeting without the disputing organisations in order to do so.

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<sup>3</sup> The Parties reiterate that the recommendations of an NCP in a specific instance involving a Company has no binding character.

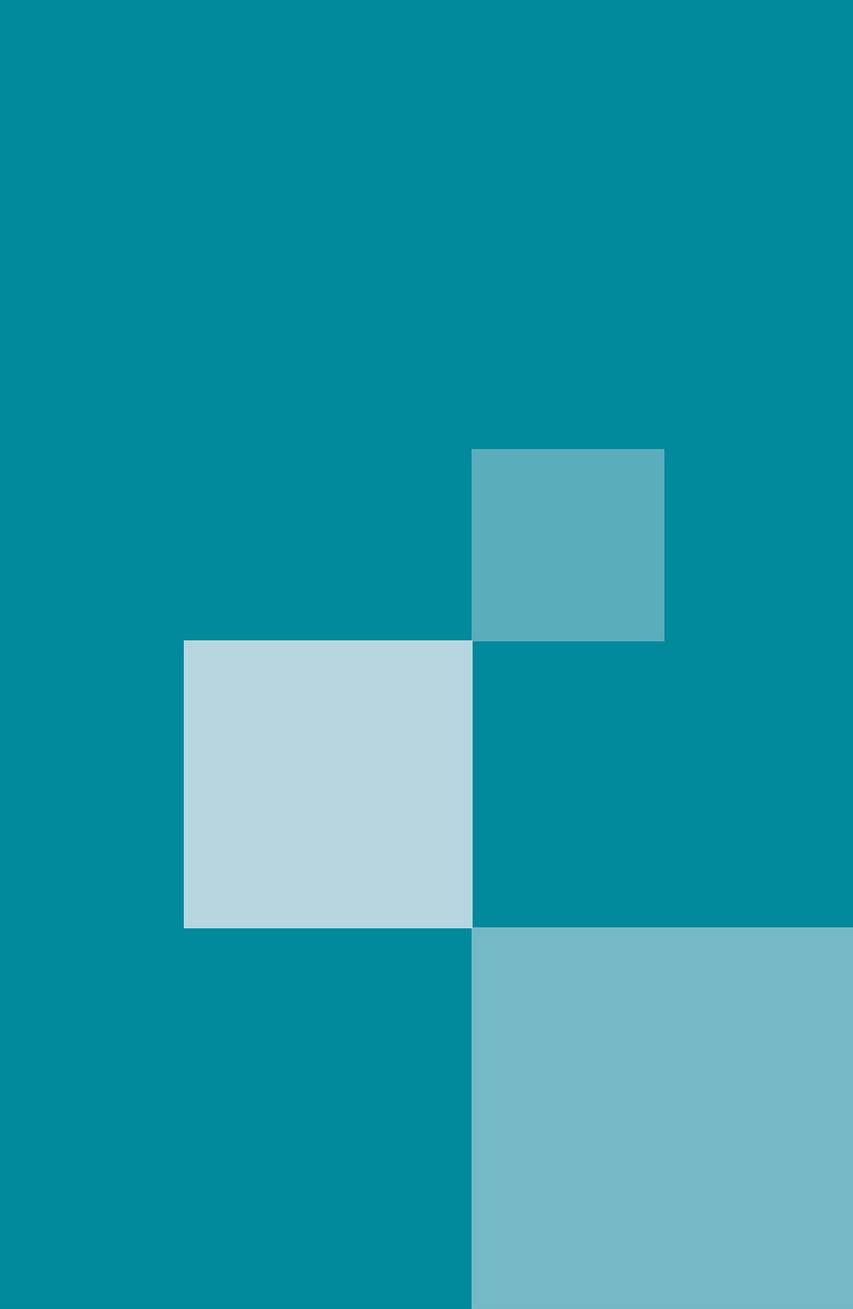
- 7.28 Within three months after receiving the required information about the dispute, the Steering Committee shall deliver its advice. Decision-making in the Steering Committee will be done by consent. If the Steering Committee is unable to reach a decision on the basis of consent, decision-making will be by 75% of the votes.
- 7.29 The advice of the Steering Committee shall include time-bound follow-up actions to be monitored by the Independent Secretariat, which reports to the Steering Committee.
- 7.30 If the advice of the Steering Committee does not meet the approval of any or all of the disputing organisations, the Steering Committee can recommend formal mediation of the dispute by an external party. The costs of the mediation should be borne by the disputing organisations. The mediation will follow the rules of procedure of the Mediators Federation of the Netherlands Foundation.
- 7.31 The formal mediation process shall be confidential between the disputing organisations and shall be concluded in three months.
- 7.32 The disputing organisations are strongly encouraged to share the results and lessons from the mediation with the rest of the Parties.

## 8 Final Provisions

- 8.1 Within 90 days after the Agreement has entered into force, an executive summary of the Agreement will be published in the Official Gazette of the Dutch Government, and on the international RBC website of the Social and Economic Council.
- 8.2 The Official Gazette shall also state that the Agreement shall be made available for perusal for the first six months after it comes into effect.
- 8.3 Appendix IX contains a roadmap with an overview of the timelines of the main (non-exhaustive) practical actions envisaged in this Agreement.
- 8.4 Articles 8.1 and 8.2. apply mutatis mutandis to amendments to the Agreement. The admission of new organisations to the Agreement, termination of the Agreement towards a Party or the dissolution of the Agreement shall be published on the public website of the Agreement.
- 8.5 All the appendices of this Agreement form an integral part of the Agreement.
- 8.6 If any provision of this Agreement is to any extent to be considered null and void, invalid, unlawful or otherwise non-binding, that provision shall, to the extent necessary, be removed from the Agreement and replaced by a provision that is binding and legally valid and that approximates the content of the invalid provision as closely as possible. The remaining provisions of the Agreement will remain unchanged in such a situation.
- 8.7 The interpretation and the validity of the terms of this Agreement are governed exclusively by Dutch law.
- 8.8 The provisions of this Agreement, with the exception of the binding decisions of the RECDC, do not create any rights or obligations under international and/or national law.

Signed in The Hague, the Netherlands on 6 March 2023.





## Appendices



## Appendix I Statement by Contracting Authorities and Renewable Energy Auction Platforms CAPs

The undersigned organisation hereby states that they have taken note of the International RBC Agreement for the Renewable Energy Sector, signed in The Hague on 6 March 2023, meant to support them in (the facilitation of) responsible procurement of renewable energy technologies, and that it endorses the goals, objectives and working method of the Agreement.

When procuring or facilitating the purchasing of renewable energy technologies, the undersigned organisation shall make use of the existing legal and policy possibilities for sustainable procurement, hereby undertaking to ask their relevant business relations to:

1. commit to and implement the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the UN Guiding Principles on Business and Human Rights (UNGPs) in their own operations and
2. perform human rights and environmental due diligence with respect to the procurement of renewable energy technologies, and to submit a report showing that they and their suppliers perform due diligence in line with the OECD Guidelines and the UNGPs.

Adhering CAPs will include this as a contractual condition during a contract execution phase and ensure compliance with these contractual conditions. This Statement will, in principle, remain valid for the duration of the Agreement. The adhering CAPs are expected to contribute financially to the implementation of the Agreement. One year after signing it, an adhering CAP may withdraw its Statement by notifying the Steering Committee and stating its reasons. The Steering Committee will notify the public of the organisation's withdrawal from the Agreement.

Signature:

Organisation:

Name:

Date:



## Appendix II Definition of terms

**Accountability Mechanism:** an independent committee that is mandated to resolve disputes and third-party complaints rising out of the Agreement. This committee is referred to as the Renewable Energy Complaints and Dispute Committee. For further information on the Mechanism see Chapter 7 and Appendix VII.

**Assessment framework:** a document that contains the standards and criteria against which Companies' actions to implement the six due diligence steps outlined in the OECD Guidance can be assessed and rated.

**Biodiversity:** biodiversity encompasses all life on earth. Biodiversity is directly linked to the natural environment, covering every living thing. It literally means the diversity of biology, ranging from plants to animals, bacteria to fungi, in all possible ecosystems. In view of renewable energy, biodiversity can be affected in all phases of the supply chain: production, construction, operation and decommissioning. Extraction from the natural environment can affect biodiversity, but claiming space is another way of directly influencing biodiversity. As biodiversity has been declining at a rapid rate, renewable energy should not function as an additional pressure source on biodiversity.

**Collective leverage:** the amount of influence the Parties and Supporting Organisations have together. It refers to the ability of the group to effect change in the wrongful practices of a third party that is causing or contributing to an adverse human rights or environmental impact. The collective leverage can be exerted to improve transparency in the supply chain, as well as to address and reduce actual or potential negative impact in the chain as a whole.

**Collective project and budget plan:** a plan and accompanying budget developed by the participants in a collective project to be presented to the Working Group Collective Actions and Increasing Leverage. For a set of guiding questions to aid the development of such a plan see Appendix III.

**Collective risks:** prioritised severe international RBC risks that have been identified and selected by the Parties collectively for joint follow-up action on limited individual leverage, existing approaches and opportunity to create positive impact.

**Communication strategy:** a plan of action by and for all Parties to inform the external world about the ambitions and results of the Agreement with the aim of increasing awareness about responsible business conduct and subsequently gaining support for the efforts of the Parties within and outside the Netherlands. A communication strategy can be part of an outreach strategy.

**Confidentiality Protocol:** a protocol that will be developed for the implementation phase of the Agreement, containing obligations and expectations of the Parties and Supporting Organisations with respect to each other on how they exchange and use confidential information and/or commercially sensitive information. All Parties and Supporting Organisations must sign the Protocol. Experts and other individuals/organisations receiving confidential information about the Agreement must sign a non-disclosure agreement.

**Consent:** an implicit or explicit expression of agreement with a proposal or the summary of the conclusions of the discussions during a meeting. Consent is implied when none of the Parties raises an insurmountable objection against a proposed decision or summary of the discussions.

**Contracting authorities:** national and municipal authorities that use public procurement instruments for renewable energy project tenders and that sign the Agreement in the role of *adhering Contracting Authorities and Renewable Energy Technology Auction Platforms*.

**Contribution plan:** a plan each Party or Supporting Organisation shares with the Independent Secretariat annually. The plan contains information on the concrete actions and the nature and scale of (human) resources (e.g. staff time and other in-kind resources) each Party or Supporting Organisation commits to undertake in that specific year to support the ambitions of the Agreement. For further information on the plan see articles 2.33-2.37.

**Due diligence (with respect to RBC):** an on-going, proactive and reactive process through which Companies can identify, prevent, mitigate and account for how they address actual and potential adverse impacts in their supply chains as an integral part of business decision making and risk management systems. Due diligence can help Companies ensure they observe the principles of international law and comply with domestic laws. Companies can carry out due diligence both individually, and collectively together with other Companies participating in the Agreement by participating in collective projects.

**Due Diligence Action Plan (DDAP):** plans to be developed by individual Companies that identify steps they will be taking to comply with the due diligence expectations for international responsible business conduct based on the 2018 OECD Due Diligence Guidance for Responsible Business Conduct.

**Enabling rights:** rights which are prerequisites for the existence of other human rights, examples are freedom of association and the freedom of expression.

**Gender responsive:** gender-responsive human rights due diligence means that in the efforts to assess and address the adverse impacts of activities, operations and value chains on human rights, businesses consider that different rights holders, particularly women, are affected differently. Businesses should be able to recognise their relationship to and impact on gender norms, complex cultural biases and power imbalances. Gender-responsive human rights due diligence does not only refer to women and girls, but means analysing how business activities may have different or disproportionate impacts on women and men, as a result of prevailing economic, social, political or cultural gender-based inequalities.

**Hotspot (in relation to risks):** the concentration and/or clusters of severe international RBC risks following the extrapolation of the Companies' risk-mapping exercises.

**Impact on biodiversity:** impacts on biodiversity are changes to any components of biodiversity, including genes, species or ecosystems, whether adverse or beneficial, wholly or partially, resulting from a project's actions. Biodiversity loss describes the decline in the number, genetic variability, and variety of species, and the biological communities in a given area. This loss can in turn lead to a breakdown in the functioning of the ecosystem and the services it provides to people (IUCN, 2021:7).

**International Responsible Business Conduct (RBC):** Making a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and avoiding and addressing adverse impacts related to an enterprise's direct and indirect operations, products or services. The phrase responsible conduct through the chain has the same connotation as international RBC.

**Knowing and showing:** efforts made by all Parties to the Agreement to obtain the relevant information on the sector supply chain and related risks, and to

communicate about the information gathered (whether positively or negatively) as well as the planned actions to address identified risks.

**Maturity Assessment Tool (MAT):** an instrument containing structured questions (based on the six steps of the OECD Due Diligence Guidance for Responsible Business Conduct), which allows individual Companies to assess, evaluate and monitor their implementation of the DDAP, and the level of compliance with the Guidance.

**Marginalised groups:** Different groups of people within a given culture, context and history at risk of being subjected to multiple discrimination due to the interplay of different personal characteristics or grounds, such as sex, gender, age, ethnicity, religion or belief, health status, disability, sexual orientation, gender identity, education or income, or living in various geographic localities.

**Natural environment:** the natural environment encompasses all living and non-living things on earth, which naturally occur there. It includes all ecosystems with relating biotic and abiotic parameters. As humans we make use of the natural environment; taking up space and making use of ecosystem services. Sustainable energy should focus on the most sustainable use of the natural environment.

**Outreach plan:** a plan of action by and for all Parties to increase the number of signatories – reflecting the diversity in the renewable energy sector - and focusing on players with significant market impact, with the aim of increasing the reach and leverage of the Agreement within and outside the Netherlands.

**Prioritisation:** it may not always be possible for enterprises to identify and respond to all adverse impacts related to their activities and business relationships immediately. In this respect, the OECD Guidelines for MNEs also clarify that where “enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence”. Enterprises are responsible for addressing any adverse impacts that they have caused or contributed to. The significance of an adverse impact is understood as a function of its likelihood and severity. Severity of impacts will be judged by their scale, scope and irremediable character.

- Scale refers to the seriousness of the adverse impact.
- Scope concerns the reach of the impact, for example the number of individuals that are or will be affected or the extent of environmental damage.

- Irremediable character means any limits on the ability to restore the individuals or environment affected to a situation equivalent to their situation before the adverse impact.

Severity is not an absolute concept and it is context specific. Assessment of severity should give special consideration to human rights impacts on groups or populations that require particular attention, including women, indigenous peoples, persons with disabilities and migrant workers.

**Renewable Energy Technologies Auction Platforms:** organisations that through a competitive process facilitate and enable the purchasing of renewable energy technologies by third parties (for example, consumers) from Companies that emerge as winners of the auction.

**Renewable Energy Sector Complaints and Disputes Committee (RECDC):** the arbitration mechanism established to resolve disputes and complaints raised in the implementation of the Renewable Energy Sector Agreement. The RECDC consists of an independent chairperson, an independent member chosen by the Companies, Industry Associations, and an independent member chosen by the Civil Society Organisations and the Knowledge Institutions.

**Responsible Procurement:** conscious and direct efforts of contracting authorities to take social and environmental considerations into account during the public procurement of goods and services.

**Risks:** likelihood of adverse impacts on people and the environment that a Company may cause, contribute to, or be directly linked to. These risks or issues can surface from either individual due diligence or collective due diligence.

**Scans:** assessments, using desktop research and corporate networks, containing identified third parties and local/regional stakeholders to collaborate with an effort to understand the local/regional context and find solutions to sustainably reduce risks and impacts in the supply chain.

**SMART measures:** measures that are specific, measurable, achievable, relevant and time-bound.

**Supply chains:** the term supply chain as used in this Agreement covers both upstream and downstream actors/users linked to Companies' products or services. Supply chain refers to the system of all the activities, organisations, actors,

technology, information, resources and services involved in moving (raw) materials and other products from the source to end user. It also concerns the activities connected to decommissioning of renewable energy products. Supply chains include entities with which a company has a direct or indirect business relationship and which either (a) supply products or services that contribute to the Company's own products or services ("upstream actors") or (b) receive products or services from the Company ("downstream actors").

**Traffic light system:** a system that uses the colours of a traffic light to reflect the extent to which each signatory has met its commitments in a given period. The sharing of the information generated by the traffic light system shall be on an aggregate and anonymised basis.

**Transparency of the supply chain:** the identification of all suppliers/actors in the Company's supply chain.

## Appendix III: References and useful resources

Parties may use the resources below to advance the implementation of the Agreement.

1. ActionAid, 'We mean Business, Protecting Women's Rights in Supply Chains', <https://actionaid.nl/2020/03/02/nieuw-rapport-over-realiseren-gendergelijkheid-in-productieketens/>, (accessed on 8 December 2021).
2. Business & Human Rights Resource Centre, 'Renewable Energy & Human Rights Benchmark', June 2020, <https://www.business-humanrights.org/sites/default/files/Renewable%20Energy%20Benchmark%20Key%20Findings%20Report.pdf>, (accessed on 8 December 2021).
3. Danish Institute for Human Rights, 'Human Rights Impact Assessment Guidance and Toolbox', <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>, (accessed on 8 December 2021).
4. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0098>, (accessed on 8 December 2021).
5. Dutch Government, 'National Agreement on the Circular Economy: Letter of intent to develop transition agendas for the Circular Economy together', Government of the Netherlands, 2017, <https://www.government.nl/documents/discussion-documents/2017/01/24/national-agreement-on-the-circular-economy>, (accessed on 8 December 2021).
6. Dutch Government, 'From giving information to imposing obligation. A new impulse for Responsible Business Conduct', 2020, <https://www.government.nl/binaries/government/documents/policy-notes/2020/10/16/from-giving-information-to-imposing-obligations/From+giving+information+to+imposing+obligations.pdf>, (accessed on 8 December 2021).
7. Dutch Enterprise Agency (RVO), Funds for Responsible Business Conduct (FVO), <https://business.gov.nl/subsidy/fund-for-responsible-business/>, (accessed on 8 December 2021).
8. IUCN, 'Guidelines for project developers on mitigating biodiversity impacts associated with solar and wind energy development', 2021 <https://www.cms.int/sites/default/files/document/CMS ETF5 IUCN TheBiodConsultancy.pdf>, (accessed on 8 December 2021).

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## Appendix IV: Guiding questions for a collective project plan

Determine the subject of the collective action:

1. How is the issue linked to wind parks and solar projects?
2. What are the key risks/impacts involved?

Determine the objective and desired outcome of the collective action:

3. What does the preferred situation look like by the end of the Agreement implementation phase (or another pre-determined deadline of the collective action)?
4. What results do you want to achieve?

Determine participants of the collective action:

5. Who do you need to achieve those results? A collective action will involve at least two Parties to the Agreement, preferably from different constituencies that have the relevant know-how, network, skill or resources for addressing the issue the collective action is focussing on. A Party can be invited to participate in a collective project, following which it will decide to what extent it has the resources or what type of resources it can make available to add value to the collective actions. A Party may also request to participate in a collective project initiated by others.

Develop a Roadmap for the collective action:

6. How and when can you achieve those results?

Develop a risk analysis for the collective action:

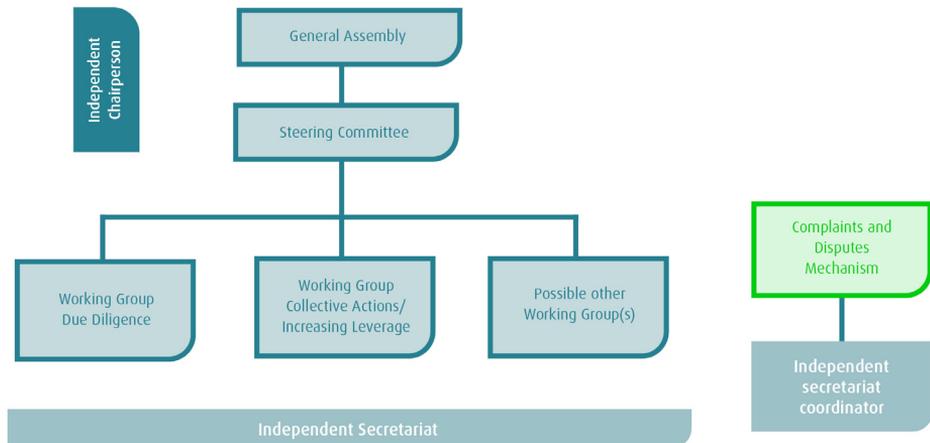
7. What could potentially undermine the desired outcome of the collective action? And how can these risks be mitigated?

Consider any other needs for the collective action:

8. What additional information do you need to work on this? All Parties will be frequently informed about the progress of the collective action and will be invited to contribute or provide additional information when needed.
9. What additional steps need to be taken? A report with the results of the collective action will be shared with all Parties of the Agreement. The report is the basis for potential further steps.



## Appendix V: Governance Structure





## Appendix VI: General overview of the tasks of the Secretariat

### General facilitation support/coordination of meetings

- Organising and following up on General Assembly (GA) meetings
- Organising and following up on Steering Committee (SC) meetings
- Organising collective workshops on due diligence and specific topics (at least 3 collective workshops per year)
- Organising dialogue sessions with upstream suppliers
- Organising, supporting, chairing and following up on Working Groups, (excluding collective impact project support and also WGs where other parties will chair)
- Organising, supporting, chairing and following up on ad hoc Working Group Communication
- Drafting and sharing agendas, meeting documents and minutes of meetings
- Supporting the recruitment and installation of the arbitration mechanism
- Supporting the Independent Chairperson of the Agreement
- Drafting meeting documents and other materials including work plans and outreach plans
- Developing the internal Renewable Energy Sector Agreement newsletter
- Reminding Parties to comply with competition law during meetings
- Anonymising and consolidating commercially sensitive information
- Oversight and accountability for budget spending

### Progress Monitoring and Evaluation

- Keeping track of if and how Parties are meeting their commitments
- Updating the Steering Committee, Parties and Supporting Organisations about the progress made by individual Parties as well as the Agreement as a whole
- Developing annual progress report
- Coordinating and facilitating the evaluation of the Independent Chairperson

### Due diligence advice and support with tools development

- Developing supportive instruments, such as tools and templates for collecting due diligence information and to analyse the risks in the supply chain
- Maintaining and updating due diligence tools
- Analysing a Company's due diligence (baseline) maturity assessment, risk analysis and due diligence action plan

- Developing supporting materials and information, such as due diligence policy, action plan and reporting templates
- Due diligence advisory support for individual Companies

#### **Outreach related support**

- Briefing of potential new parties
- Onboarding of new parties
- Participation in network events for the Agreement
- Annual presentations to members of industry associations about the Agreement and its progress
- Developing communication materials (e.g., brochures, flyers, presentations, etc.)
- Development substantive documents for the Agreement website

#### **Coordination with other international RBC Agreements**

- Ensuring coherence between the RBC Agreements for the extractive sectors
- Sharing best-practices from other Agreements with Parties in the Wind Energy Sector Agreement
- Supporting Parties substantively with external (national and international) outreach and communication about the international RBC Agreement

#### **Administrative and communication support**

Supporting the policy officer with communicative and administrative duties, such as:

- Planning and organising meetings
- Uploading documents on SharePoint
- Assisting new Parties to gain access to SharePoint
- Coordinating the communication about the Agreement internally and externally
- Managing and updating the Agreement website
- Drafting and organising press releases
- Supporting with social media communications
- Coordinating the process for the annual year report publication
- Coordinating the development of communication materials

## Appendix VII: Draft Rules of Procedure of the Renewable Energy Sector Agreement Complaints and Dispute Committee (RECDC)

### Article 1

- 1.1. *Independent Secretariat*: the independent body commissioned to support and facilitate the implementation of the International RBC Agreement for the Renewable Energy Sector.
- 1.2. *The Renewable Energy Agreement*: the 2022 multi-stakeholder sector agreement that seeks the effective implementation of the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises by Companies in the renewable energy sector, and aims to tackle issues in the sector that the Companies cannot deal with individually.
- 1.3. *Complaint*: an issue between a Stakeholder (or its Mandated Representative) and a Company of the Agreement concerning an injury, loss or (environmental) damage of material significance suffered individually by a Stakeholder or a group to which the Stakeholder belongs, due to a violation of the Renewable Energy Agreement.
- 1.4. *The Renewable Energy Sector Complaints and Dispute Committee (RECDC)*: the arbitration body appointed by the Parties to the Renewable Energy Agreement and tasked with ruling on Complaints and Disputes arising under the Agreement.
- 1.5. *Dispute*: an issue between the Independent Secretariat and a Company arising from the due diligence monitoring mandate of the Independent Secretariat.
- 1.6. *Company*: an organisation that upon signing the Renewable Energy Agreement was designated as being part of the “company constituency” of the Agreement.
- 1.7. *Mandated Representative*: a natural or legal person mandated by the Stakeholder to represent the Stakeholder throughout the proceedings.

- 1.8. *OECD Guidelines*: The OECD Guidelines for Multinational Enterprises as revised in 2011 and the OECD Due Diligence Guidance for Responsible Business Conduct (2018).
- 1.9. *Party to the Renewable Energy Agreement*: an organisation, be it a civil society organisation, industry association, knowledge institution, company or government entity that has signed the *International RBC Agreement for the Renewable Energy Sector* as a “Party”.
- 1.10. *Stakeholder*: anyone who has suffered damage due to a violation of the Agreement caused or contributed to by a company, or caused or contributed to by another entity to which the company is directly linked.<sup>1</sup> Legal entities can be considered Stakeholders when the interests that they specifically represent, according to the factual actions and objects clause found in the articles of association, have been adversely affected due to a violation of the Renewable Energy Agreement.
- 1.11. *Participant in the complaint or dispute proceeding* (the Participant): a person or organisation directly involved in a given complaint or dispute proceedings, for example stakeholders, a defendant company, an agreement secretariat in case of a dispute or a mandated representative.
- 1.12. *Steering Committee*: the governing body of the Renewable Energy Agreement consisting of a representation of various constituencies: Companies, industry associations, civil society organisations and knowledge institutions, and the Dutch government. The Steering Committee is tasked with overseeing compliance with the Renewable Energy Agreement and the supervision of its implementation.
- 1.13. *UNGPs*: the United Nations Guiding Principles on Business and Human Rights (2011).

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<sup>1</sup> According to the Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, a business enterprise can “cause”, “contribute to” or “be directly linked to” adverse human rights impacts.

## Composition

### Article 2

- 2.1. The Renewable Energy Complaints and Disputes Committee (RECDC) consists of three members.
- 2.2. All three members of the RECDC shall be appointed unanimously by all the Parties to the Renewable Energy Agreement. One member shall be appointed as the chairperson of the three by the Parties. The Parties shall agree on the minimum professional qualifications and conflict resolution experience of the members of the RECDC in a *Profile* that shall be used to invite candidates to apply for the position of member of the RECDC. The Steering Committee shall draft a *selection and appointment process* that will be approved by all Parties to the Agreement and will be used for the recruitment of the members of the RECDC. The composition of the members of the RECDC shall reflect the multi-stakeholder character of the Renewable Energy Agreement.
  - 2.2.1 Members of the RECDC shall be independent. They shall not be affiliated with any of the Parties. They shall not take instructions from any Party, organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest
- 2.3. For each of the three members of the RECDC an alternate can be appointed. The alternates are tasked with functioning as substitutes for the members of the RECDC when necessary.
- 2.4. The members of the RECDC and the alternate members of the RECDC will be appointed for a three-year term and may be reappointed twice after their first term.<sup>2</sup>
- 2.5. The members of the RECDC and the alternate members of the RECDC can be discharged during their term following a unanimous decision by the Steering Committee or at their request.
- 2.6. The alternate members shall be appointed in the same manner as the regular members of the RECDC as laid down in subsection 2 of this article.

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<sup>2</sup> This is contingent on the continuation of the Renewable Energy Agreement following its initial expiration date.

- 2.7. The tenure and mandate of the RECDC is linked to the duration of the Agreement unless the Parties to the Agreement explicitly determine otherwise.

#### Article 3

The RECDC shall be assisted by a secretariat coordinator when executing its tasks.

### **Mandate and Jurisdiction**

#### Article 4

- 4.1 The RECDC shall resolve complaints and disputes arising out of the Renewable Energy Agreement subject to provisions of this Agreement.
- 4.2 The RECDC has no jurisdiction with regard to complaints as stated under subsection 1:
- If these have already been settled/decided by an equivalent grievance mechanism.
  - If it reaches the conclusion that it cannot make a positive contribution to the resolution of the issues raised and that handling the complaints would create serious prejudice for either of the parties involved in other parallel proceedings or cause a contempt of court situation.
- 4.3 The RECDC will substantiate its decision that it has no jurisdiction to decide on a complaint.

### **Admissibility**

#### **Disputes**

#### Article 6

- 6.1. Entities engaged in a dispute shall first enter into dialogue in good faith with a view to resolving the dispute bilaterally.
- 6.2. If the disputing entities are unable to resolve the issue bilaterally, they shall submit the dispute to the Steering Committee for resolution.
- 6.3. Within two months after receiving the submission of the dispute, the Steering Committee shall mediate a mutually acceptable resolution of the dispute, and share its unanimous conclusions with the disputing entities.

- 6.4. A disputing entity can submit the issue to the RECDC within two months after receiving the final conclusions of the Steering Committee as per article 6.3, if it still considers the conflict unresolved.
- 6.5. A dispute submitted by a Company or the Independent Secretariat to the RECDC is admissible if it was first brought to the attention of the Steering Committee within 2 months after a final decision of the Independent Secretariat following from the latter's due diligence mandate monitoring mandate.
- 6.6. A dispute shall be deemed inadmissible if it is manifestly unfounded.

#### Article 7

- 7.1 A dispute should be submitted to the RECDC via e-mail, as published on the website of the Renewable Energy Agreement. The submission should at least contain the following information:
  - a. Date of submission;
  - b. Name of the defendant (Company, Secretariat, Party or Parties to the Renewable Energy Agreement) and, in case the defendant is a Company, the office address;
  - c. Description and substantiation of the dispute.
- 7.2 Alternatively, other written means to submit the Dispute may be considered admissible by the RECDC. The RECDC has the opportunity to request follow-up information from an entity submitting the dispute, when the initial submission of the claim does not meet the required information for an admissible dispute. A failure to provide the requested information within the timeframe set by the RECDC will result in inadmissibility of the dispute.

### Complaints

#### Article 8

- 8.1. Prior to submitting a complaint, the disputing persons shall, in good faith, attempt to resolve the issue bilaterally and amicably.
- 8.2. A complaint is admissible when the issue concerned is of material significance to the Stakeholder individually or to the group to which he/she belongs, and can be substantiated both in relation to the Company concerned and on the basis of the goals of the Renewable Energy Agreement, the OECD

- Guidelines and the UNGPs. The complaint has to be substantiated in such a manner that it enables the RECDC to understand its nature.
- 8.3. The complaint is admissible when it meets the criterion of subsection 2 of this article as well as the criteria set out in article 9.
  - 8.4. The complaint is inadmissible when it is manifestly unfounded.
  - 8.5. Where a Stakeholder (or its Mandated Representative) submits a complaint, the Stakeholder/Complainant must disclose if the Stakeholder/Complainant has already filed a complaint through another venue or if another authority has already decided the same issue against the Company of the Agreement. Failure to do so may result in the RECDC rejecting the claim.

#### Article 9

- 9.1. A complaint should be submitted to the RECDC via its e-mail address, as published on the website of the Renewable Energy Agreement. The e-mail should at a minimum contain the following information:
  - a. Date of submission;
  - b. Name of the accused Company;
  - c. The name of the Stakeholder and, if the Stakeholder is a legal entity, a copy of its articles of association;
  - d. If the complaint is submitted by a Mandated Representative, proof of mandate granted by the Stakeholder and if possible, the contact details of the Stakeholder;
  - e. Country and place of residence of the Stakeholder;
  - f. Description and substantiation of the complaint;
  - g. The location of the alleged violation.
- 9.2. Alternatively, a complaint submitted by other written means may also be declared admissible by the RECDC. If the information in the initial submission of the complaint does not meet the admissibility requirements, the RECDC may request additional information from the Stakeholder or the latter's Mandated Representative. Failure to provide the requested information within the timeframe set by the Committee will render the complaint inadmissible.
- 9.3. If the Stakeholder is unable to communicate in Dutch or English, the RECDC will suggest that the Stakeholder use a Mandated Representative.

#### 9.4. Regarding the Stakeholder's anonymity:

At the claimant's request, the RECDC may decide to grant anonymity to a Stakeholder. The request must be substantiated and plausibly demonstrate that the Stakeholder's interests will be harmed without anonymity. If the RECDC rejects the request for anonymity, the requesting Participant will be given the opportunity to withdraw the complaint with regard to that Stakeholder or in its entirety.

#### Article 10

A complaint by an organisation that is not a Stakeholder itself is admissible if the organisation(s) representing the Stakeholders or the Stakeholders represented themselves meet the criteria in articles 8 and 9.

### General

#### Article 11

Upon receipt of the complaint or the dispute, the RECDC will rule within one month in principle on the admissibility of the complaint or the dispute as well as on the admissibility of the requesting Party or Parties.

#### Article 12

When a dispute or complaint is admissible under the articles of this chapter, the RECDC will deal with and rule on it.

### Complaints and Dispute procedure

#### Article 13

13.1 When the RECDC has declared a dispute or complaint admissible in principle, it will subsequently notify the opposing Participant of the dispute or complaint in writing, and send that Participant a copy of the dispute or complaint. The RECDC will at the same time inform the opposing Participant that it has one month in which to submit a memorandum of defence with documentary evidence relating to the complaint or dispute. This period may be shortened or extended by the RECDC or at the request of any of the Participants.

13.2 A copy of the memorandum of defence submitted to the RECDC with documentary evidence will be sent to the Participant who has submitted the complaint.

#### Article 14

The RECDC can decide – whether or not following a request to that effect – to join cases when the complaints are similar and concern the same:

- a. Company;
- b. Breach;
- c. Location of the violation.

If the RECDC decides to merge cases, it shall notify all Participants concerned in writing and provide reasons for its decision. If the RECDC decides not to grant a request to join cases, it will motivate its decision.

#### Article 15

Participants in the proceedings have the right to representation throughout the proceedings.

#### Article 16

16.1. In the case of a complaint, the RECDC will summon the Participants to an oral hearing.

16.2. In the case of a dispute, the RECDC has the discretion to summon Participants to an oral hearing. The RECDC can only refrain from holding an oral hearing with the Participants' consent.

16.3. The hearing will take place within one month after the date set for submission of the memorandum of defence as mentioned in article 14, subsection 1. The RECDC will determine the location, date and time and will notify the Participants thereof. The RECDC may, at its discretion, extend the one-month period.

16.4. The minutes of all hearings can be made available upon request of the Participants.

#### Article 17

At least 10 days prior to the hearing, the Participants must exchange copies of all exhibits they intend to introduce at the hearing. The RECDC may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. The RECDC may exclude exhibits that a Participant fails to exchange in a timely manner from the proceedings.

#### Article 18

At the RECDC's discretion, the Participants can be summoned to additional hearings when this is warranted by the nature of the complaint or dispute.

#### Article 19

The RECDC may, at its discretion, advise the Participants to engage in mediation or negotiations facilitated by a neutral Participant at all times during the complaint proceedings. The Independent Secretariat shall administer a list of mediators/facilitators whom Participants could engage. The Participants are, however, free to engage other mediators/facilitators.

#### Article 20

At the RECDC's discretion or at the request of (one of the) the Participants, the RECDC can decide to allow additional written submissions.

#### Article 21

The RECDC will grant all Participants an equal and adequate opportunity to present their case. The RECDC will decide on the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the complaint or dispute.

#### Article 22

22.1. If one or more Stakeholders reside in a foreign country and is/are unable to physically attend the oral hearing, the RECDC can conduct remote hearings, for example via teleconference or videoconferencing. The RECDC may also choose to hold remote hearings when a Stakeholder is represented during the physical hearing (see article 15) but is unable to attend this hearing himself or herself.

22.2. If the RECDC decides during a hearing that it is not feasible to have remote contact at that moment, it can schedule a new remote hearing at its discretion. The Company shall be notified of this alternative hearing. The RECDC shall decide, at its own discretion, whether or not the Company may be present at the remote hearing or will be provided with the minutes of the hearing afterwards.

22.3. At the request of a Participant, the RECDC can decide to hear third parties (other than the Stakeholder) residing in a foreign country and unable to physically attend the hearing. The RECDC can decide on safeguarding the anonymity of the third party. The RECDC therefore has the discretion to hear

the third party during the hearing or at a different time. The Stakeholder or Mandated Representative will be notified of the alternative hearing and will, at the RECDC's discretion, either be allowed to be present during the hearing or will be provided with minutes of the hearing afterwards.

#### Article 23

- 23.1. Under exceptional circumstances the RECDC may appoint an independent facilitator in the following situations to hear Stakeholders and/or witnesses:
- a. If the Stakeholder(s) reside(s) in a foreign country and is/are unable to attend the hearing physically or otherwise or to provide the necessary information through a Mandated Representative;
  - b. When during the investigation the RECDC deems it necessary to speak to local witness(es) in order to acquire more information.
- 23.2. The RECDC will appoint the facilitator after consulting both Participants on the person of the facilitator as well as the issues and questions that will be communicated by the facilitator to the Stakeholder(s) and/or witness(es).
- 23.3. The RECDC will draw up a written assignment for the facilitator. A copy of the assignment will be sent to both Participants.
- 23.4. The RECDC can decide on safeguarding the anonymity of the persons mentioned under subsections 1, a) and 1, b).
- 23.5. Upon request of one of the Participants, the RECDC can hear the facilitator alone or together with the Stakeholder or Mandated Representative and/or other witnesses when deemed necessary. This hearing can take place before or during the oral hearing. If the hearing of the facilitator takes place during the oral hearing, the RECDC as well as both Participants may question the facilitator. If the hearing takes place before the oral hearing, the Participants will be sent a list of questions prior to the hearing of the facilitator. Participants will be granted the opportunity to add questions to the list.
- 23.6. Participants will be sent minutes of the hearing. Under exceptional circumstances such as significant safety concerns, the RECDC can decide not to provide the Participants with the complete minutes of the hearing of the facilitator.

#### Article 24

- 24.1. If additional information from the location of the alleged violation is deemed necessary to decide the Complaint, the RECDC can order the Company to provide such evidence as specified by the RECDC.
- 24.2. If the requested Participant deems the requested information confidential, the alternate chairperson of the RECDC will inspect the relevant information and rule on the confidentiality. The alternate chairperson can issue the following rulings:
- a. When the alternate chairperson deems the information confidential and irrelevant for the decision of the dispute or complaint, the requested Participant will no longer be obliged to provide the requested information;
  - b. When the alternate chairperson deems the information confidential but essential to decide the dispute or complaint, the RECDC may only inspect the information with the permission of the requested Participant. If the permission is withheld, the RECDC may infer from this refusal the consequence it deems fit;
  - c. When the alternate chairperson deems the information to be non-confidential, the information will be disclosed to the RECDC and the Participants, unless the disclosing Participant objects. If permission is withheld, the RECDC may infer the consequence it sees fit.

#### Article 25

- 25.1. Upon the request of one of the Participants the RECDC can grant Participants' requests to call witnesses and/or experts for the oral hearing. The RECDC as well as both Participants may question the witnesses and/or experts. Names and addresses of the witnesses and/or experts must be submitted to the RECDC no less than one week prior to the hearing.
- 25.2. Participants are allowed to attend the expert hearings.
- 25.3. Participants are allowed to attend the witness hearings, unless the RECDC holds a closed hearing due to privacy or safety concerns. In case of a closed hearing the Participants will be sent a list of questions that the RECDC envisages to ask the witness(es) prior to the hearing. The Participants will be granted the opportunity to add questions to the list. After the closed hearing the RECDC will provide the Participants with minutes of the hearing. When necessary, sensitive information regarding privacy may be omitted from the minutes. The minutes may also be in anonymous form altogether.

#### Article 26

- 26.1. An expert can be appointed at the reasonable discretion of the RECDC, to conduct research deemed necessary to decide the complaint or dispute. The RECDC will appoint the expert after consulting both Participants.
- 26.2. The RECDC will draw up a written assignment containing points of research for the expert. A copy of the assignment will be sent to both Participants.
- 26.3. The RECDC will send a copy of the expert's report to the Participants, who can submit a written response to the report within a two-week period. The RECDC can extend or shorten the two-week period.

#### Article 27

The RECDC can appoint an independent translator if a Stakeholder and/or facilitator and/or witness and/or expert is unable to communicate in English or Dutch.

#### Article 28

- 28.1. The Participants may offer evidence in any form as long as it is relevant and material to the complaint or dispute. Evidence that is deemed irrelevant and immaterial to the complaint or dispute by the RECDC will not be accepted in the proceedings and will therefore not be a part of the decision-making by the RECDC.
- 28.2. The RECDC may order the Participants to produce additional information that is considered necessary to decide on the complaint or dispute. In the event that the requested participant deems the requested information confidential, the procedure as laid down in article 24, subsection 2 will be utilised to determine the confidentiality of the requested information.

#### Award

##### Article 29

The RECDC will decide on the complaint or dispute based on the Agreement, the UNGPs, the OECD Guidelines and the standards of reasonableness and fairness.

##### Article 30

- 30.1 The RECDC will issue an arbitral award within two months of the oral hearing. This term may be extended based on the complexity of the procedure.

30.2 The RECDC will issue an arbitral award within three months after submission of a Dispute or Complaint if no hearing is sought by either of the Participants involved in the Dispute or the Complaint. This three month term may be extended with the consent of the Participants involved in the Dispute or Complaint.

#### Article 31

31.1. The RECDC will reach its decisions by a majority of votes.

31.2. The arbitral award of the RECDC will be binding on all the Participants involved in the process.

31.3. The arbitral award will be signed by all the members of the RECDC and its secretariat coordinator and shall be sent to the Participants in writing.

#### Article 32

32.1. The RECDC will rule on its jurisdiction, the admissibility of Participants and the admissibility of the complaint or dispute.

32.2. The RECDC will decide on the merits of the Complaint or Dispute by rendering one of the following decisions:

- a. The complaint or dispute is unfounded;
- b. The complaint or dispute is partially unfounded and partially well-founded;
- c. The complaint or dispute is well-founded.

32.3. If the RECDC rules the complaint or dispute as unfounded, it can include non-binding recommendations in the decision.

32.4. If the RECDC rules that the complaint or dispute is well-founded, the RECDC must include one or more of the following measures in the decision, taking into account existing standards, precedents and/or the preferences of the Stakeholder:

- a. Binding recommendations for improvement;
- b. A duty to remediate in accordance with the UNGPs and OECD Guidelines.

32.5. The RECDC can only award financial compensation as a duty to remediate, as stated in subsection 4, under b, when the Company has been found to cause or contribute to an adverse human rights impact and the Stakeholder or

Mandated Representative has proven causality between the violation of the Agreement by the Company and the damage.

#### Article 33

33.1 Each participant shall bear its own costs.

33.2 Where the Committee considers the complaint to be well-founded in whole or in part, it may - in derogation of subsection 1 - order the Company to compensate all or part of the costs of the procedure incurred by the Stakeholder or the Mandated Representative who submitted the Complaint, insofar as the costs were reasonably incurred in the Committee's opinion and are reasonable in terms of their extent and taking into account the size of the Enterprise.

#### Article 34

The ruling of the RECDC, including in relation to the admissibility of a complaint, shall be published on the website of the Renewable Energy Agreement. The ruling of the RECDC shall also be made available in English if one of the Participants involved is non-Dutch speaking. When warranted by privacy concerns the RECDC can publish an anonymised version of the decision. The Renewable Energy Agreement can determine other means of publishing the ruling.

#### Article 35

35.1. The chairperson of the RECDC can, at his/her own discretion or at a request of a participant, rectify a manifest error in the decision within two weeks after the dispatch of the binding decision.

35.2. A copy of the request as mentioned under subsection 1 will be sent to the other participant in the proceedings and will suspend the possible execution of the decision until the RECDC has decided upon the request.

35.3. The other participant in the proceedings will be offered a two-week term to respond to the request as mentioned under subsection 1.

35.4. Rectification will occur through a written notification to both Participants.

35.5. The rectified decision will be published on the website of the Renewable Energy Agreement.

#### Article 36

The RECDC is authorised to decide on procedural issues not expressly addressed in these rules of procedure.

## Confidentiality, challenge and recusal

### Article 37

RECDC hearings are closed and not open to the public.

### Article 38

Members of the RECDC are bound by confidentiality regarding all information presented to them in light of the proceedings and that has not been made public throughout the proceedings.

### Article 39

Participants in a dispute or complaint proceedings are bound by confidentiality regarding all information presented to them in light of the proceedings and which has not been made public throughout the proceedings.

### Article 40

The RECDC shall make public on its website information about:

- Complaints or disputes it has received, providing a brief summary;
- Its decision concerning the admissibility of the complaint or dispute;
- Whether or not a complaint or dispute is in the process of being reviewed on the merits;
- The outcome of the complaints or disputes resolution.

### Article 41

41.1. Each of the members of the RECDC charged with handling the proceedings can be challenged by one or both of the Participants when there are grounds to doubt their impartiality or independence. The RECDC members can be recused throughout the proceedings.

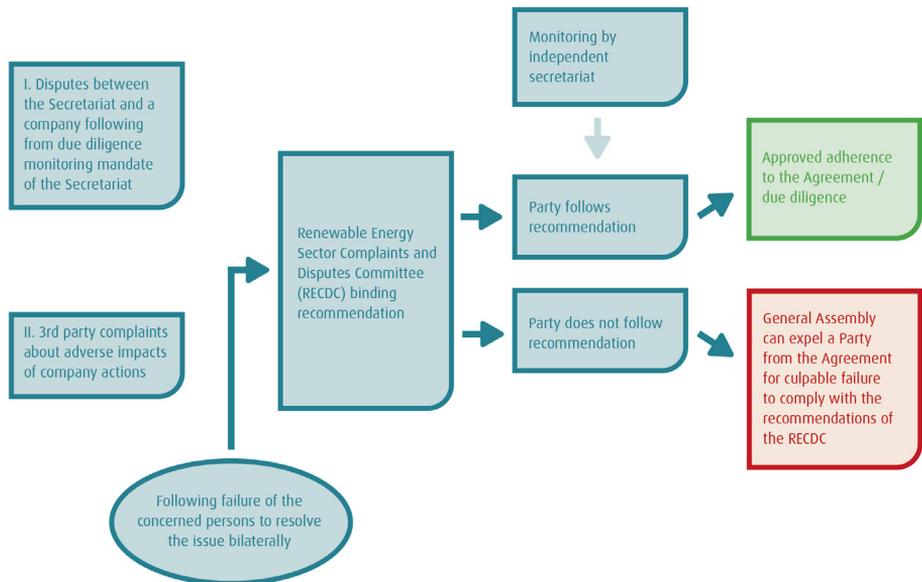
41.2. A request to recuse one of the RECDC members must be submitted to the alternate chairperson of the RECDC in writing and contain substantiation of the request. The alternate chairperson of the RECDC will decide upon the request. The proceedings will be paused until the alternate chairperson has decided upon the request and, if necessary, the RECDC member will be replaced.

41.3. A member of the RECDC can recuse him-/herself from the proceedings at his/her own discretion. The proceedings will be paused until the RECDC member has been replaced.

## Miscellaneous

41. The seat of the arbitration shall be The Hague, The Netherlands.

## Appendix VIII Visualisation of the Arbitration Mechanism process





## **Appendix IX Timeline of actions for Implementing the International RBC Agreement for the Renewable Energy Sector in the first three years (Roadmap)**

Due to its size, Appendix IX, Roadmap for implementing the International RBC Agreement for the Renewable Energy Sector, has been published separately.



## Colophon

### Published by

Sociaal-Economische Raad  
(Social and Economic Council)  
Bezuidenhoutseweg 60  
P.O. Box 90405  
NL-2509 LK The Hague  
The Netherlands

T +31 (0)70 3499 525

E [communicatie@ser.nl](mailto:communicatie@ser.nl)

[www.imvoconvenanten.nl/nl/hernieuwbare-energie](http://www.imvoconvenanten.nl/nl/hernieuwbare-energie)

### Photography

Cover: Shutterstock

### Design and printing

2D3D, The Hague (concept)

SER Graphic Design

© 2023, International RBC/Social-Economic Council

**SOCIAAL-ECONOMISCHE RAAD**  
**(Social and Economic Council)**  
Bezuidenhoutseweg 60  
P.O. Box 90405  
NL-2509 LK Den Haag  
The Netherlands

T + 31 (0)70 3499 525  
E [communicatie@ser.nl](mailto:communicatie@ser.nl)

[www.ser.nl](http://www.ser.nl)

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