

IRBC Sustainable Food Products Agreement



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THIS TEXT IS AN TRANSLATION OF THE DUTCH TEXT OF THE AGREEMENT. IN THE CASE OF DISCUSSIONS ABOUT THE ACCURACY OF THE ENGLISH TRANSLATION OR INTERPRETATION, THE DUTCH TEXT OF THE AGREEMENT PREVAILS.

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Management summary

Management summary

Businesses can find themselves in situations in production countries that impact fundamental issues such as human rights, safety and the environment. Many businesses and branches of industry are therefore emphasising international responsible business conduct (IRBC) and sustainable supply chain management. Society expects this of them. Moreover, this has been laid down in international guidelines and obligations such as the United Nations Guiding Principles on Business and Human Rights, the Guidelines for Multinational Enterprises proposed by the Organisation for Economic Cooperation and Development (OECD) and the core labour standards defined by the International Labour Organisation (ILO).

By means of this agreement, the Parties are intending to achieve substantial improvements in the food products chains within an ambitious and realistic term of three to five years for groups experiencing those negative effects.

The Industry Associations are working to bring about a process that will demonstrably strengthen IRBC risk management among their directly or indirectly affiliated members. They will support their members and provide them with recommendations and improvement possibilities identified by the Parties. The aim is that all businesses affiliated directly or indirectly to the Industry Associations will implement IRBC risk management within the term of the agreement.

The Parties have concluded agreements that will allow problems that cannot be solved by individual businesses to be tackled jointly. When the agreement commences, projects will be launched concerning living wages and climate change. The Unions and NGOs involved will offer specific support to these projects on the basis of their knowledge and networks. They can involve their local partners in the implementation. If desired, the Dutch government can conclude agreements with the authorities in production countries. Individual businesses are also participating in the projects and providing information about their chain for that purpose.

The Parties will compile an annual report of the activities in the context of the agreement and the progress of what has been agreed. The Parties will evaluate progress after two years. If the results do not live up to expectations, supplementary measures will be adopted.



IRBC Sustainable Food Products Agreement

IRBC Sustainable Food Products Agreement

The Parties,

1. the Dutch Minister for Foreign Trade and Development Cooperation, acting in the capacity of the administrative authority, referred to hereafter as “FTDC”,
2. the Dutch Minister of Agriculture, Nature and Food Quality, acting in the capacity of the administrative authority, referred to hereafter as “ANF”,

Parties 1 and 2 are jointly referred to hereafter as “the Government”,

3. the Dutch Association of Food Trade Organisations (*Centraal Bureau Levensmiddelenhandel*), referred to hereafter as “CBL”, located in Leidschendam, the Netherlands, duly represented by Mr. Marc Jansen,
4. the Dutch Food Industry Federation (*Federatie Nederlandse Levensmiddelen Industrie*), referred to hereafter as “FNLI”, located in The Hague, the Netherlands, duly represented by Mr. Bas Alblas,
5. the Royal Dutch Spice Association (*Koninklijke Nederlandse Vereniging voor de Specerijhandel*), referred to hereafter as “KNVS”, located in Rotterdam, the Netherlands, duly represented by Mr. Paul de Rooij.

Parties 3, 4 and 5 are jointly referred to hereafter as “the Industry Associations”,

6. the Dutch Trade Union Confederation (*Federatie Nederlandse Vakbeweging*), referred to hereafter as “FNV”, located in Woerden, the Netherlands, duly represented by Mr. Tuur Elzinga,
7. the National Federation of Christian Trade Unions in the Netherlands (*Christelijk Nationaal Vakverbond*), referred to hereafter as “CNV”, located in Utrecht, the Netherlands, duly represented by Mr. Arend van Wijngaarden,

Parties 6 and 7 are jointly referred to hereafter as: “the Unions”,

8. ICCO Cooperation, located in Utrecht, duly represented by Mr. Wim Hart,
9. Global March Against Child Labour, referred to hereafter as “Global March”, located in The Hague, duly represented by Mr. Frans Roselaers,
10. Woord en Daad Foundation, referred to hereafter as “Woord en Daad”, located in Gorinchem, duly represented by Ms. Rina Molenaar,

Parties 8 up to and including 10 are jointly referred to hereafter as “NGOs”,

11. IDH Sustainable Trade Initiative Foundation, referred to hereafter as “IDH”,
located in Utrecht, duly represented by Mr. Joost Oorthuizen,
all referred to hereafter as “the Parties”.



Considering
that

Considering that

1. the food products industry and the supermarkets (jointly referred to hereafter as “the food products sector”) make an important contribution to the Dutch economy. The two sectors employ a total of approximately 435,000 staff and turnover in the industry and supermarkets totalled EUR 65 billion and EUR 36 billion, respectively, in 2015. Supermarkets account for more than 50% of Dutch consumer spending on food and drink. Moreover, with an export value of more than EUR 35 billion, the food products industry is a major contributor to the trade balance. Conversely, Dutch consumers buy products from all over the world and ingredients from all over the world can be found in Dutch food products;
2. globalisation in the food products sector does not only have positive effects in terms of employment and open economies in developing countries. Trade, production and consumption in international chains may also involve a negative impact on people, animals, nature and the environment, as is evident in the responsible business conduct (RBC) sector risk analysis, which KPMG performed on the instructions of central government¹;
3. as employers, manufacturers, exporters, investors, buyers and joint venture partners, the Dutch business community wishes to strengthen its contribution towards achieving sustainable growth and decent employment in production or supply chains outside the Netherlands;
4. it is necessary to examine the functioning of businesses, also from the viewpoint of disadvantaged or potentially disadvantaged parties;
5. it is mainly up to businesses to shape their responsible conduct, but there are also issues that transcend company boundaries and when tackling these issues Industry Associations, NGOs, Unions and the Government can support the businesses;
6. the Parties recognise the OECD Guidelines for Multinational Enterprises² and the United Nations Guiding Principles on Business and Human Rights (UNGPs)³ as a framework for International Responsible Business Conduct (IRBC) and that businesses are expected on this basis to consider the risks of a negative impact on people, animals, nature and the environment within their value chains from the viewpoint of possible disadvantaged parties;

1 KPMG (2014) *MVO Sector Risico Analyse. Aandachtspunten voor Dialoog*.

2 OECD (2011) *OECD Guidelines for Multinational Enterprises. Recommendations for responsible business conduct in a global context*.

3 United Nations (2011) *UN Guiding Principles on Business and Human Rights*.

7. due diligence, or IRBC risk management, is understood to mean the process whereby businesses identify, prevent and limit the actual and potential negative impact of their actions and give an account of how they deal with identified risks to people, animals, nature and the environment. In implementing IRBC risk management, the emphasis is not on the risks that the business is facing but rather on the rights of workers, local communities and other stakeholders and the potential and actual risk of negative impacts on them⁴;
8. IRBC risk management is defined in the OECD guidelines, as well as in the UNGPs;
9. the Parties endorse the importance of adopting measures on the basis of IRBC risk management. Implementing IRBC risk management is a responsibility to be taken by every business;
10. IRBC risk management serves to identify, prevent or remediate negative effects in the food products chain. However, it also serves to contribute to the Sustainable Development Goals⁵, particularly those concerning poverty reduction (1), food security (2), health (3), good quality employment (8), responsible production and consumption (12), combating climate change (13), preservation and sustainable use of the oceans, seas and marine resources (14) and sustainable use of natural resources (15);
11. in the food products sector, there are a range of IRBC standards, certification schedules and quality marks available that are widely accepted internationally and that it is important, for reasons of support and efficiency, that these are used where possible – in so far as in accordance with the requirements for prudent IRBC risk management – when implementing and demonstrating IRBC risk management;
12. both the central government and the European Union have a specific role as a legislator and enforcer, also in the case of imported food products;
13. the Parties are therefore prepared to lay down arrangements in an agreement, which describes a number of joint measures for the further substantiation of international responsible conduct in the sector⁶;
14. the Parties are taking the SER's advisory report on sector-wide agreements as a basis⁷;

4 On the basis of: SER (2014) *Themarapportage Due diligence*. Where the remainder of this text refers to 'IRBC risk management', 'due diligence' may also be read.

5 United Nations (2015) Sustainable Development Goals.

6 With the exception of members of NVS who are involved purely in service provision on the instructions of owners of spices, such as repositories, laboratories, sterilisation facilities and insurers.

7 SER (2014) *Advisory Report on IRBC agreements*, publication no. 14/04.

15. by entering into this agreement, the Parties are not endeavouring to restrict the market or reduce competition. It is not their intention to restrict competition on the food products market to the disadvantage of consumers⁸.

Endorse the following:

16. The implementation of IRBC risk management by businesses is necessary in order to substantiate their responsible conduct.
17. To identify, prevent and reduce risks, every business in the food products sector must be able to reasonably answer the questions summarised in Appendix 1 and which are derived from the OECD/FAO Guidance for Responsible Agricultural Supply Chains⁹. They acknowledge that:
- the position taken by a business in a chain or several chains at the same time influences the way in which IRBC risk management can be shaped;
 - it is a growth and learning process, in which expectations with respect to large businesses differ from those with respect to SMEs, more can be expected of businesses that are active in chains involving greater risks, and of businesses that have more influence on the chain and/or more experience;
 - responses to the questions in Appendix 1 are already present in the existing management systems of many businesses.
18. The measures expected of a business to remedy or prevent a negative impact partly depend on whether the business has caused this impact, has contributed to this impact, or is related to it indirectly.

Agree as follows:

⁸ The competition rules that will apply to industry associations and businesses are explained in Appendix 4.

⁹ OECD/FAO (2016) *Guidance for Responsible Agricultural Supply Chains*.



Arrangements

Arrangements

Article 1 – Aim of the agreement

1. Within the food products sector, the Parties wish:
 - a. to establish an ongoing process of strengthening and improvement of IRBC risk management, and
 - b. to jointly implement specific projects devoted to complex themes, with regard to which it has been established that the responsibility of businesses cannot be effectively tackled by individual businesses alone. When the agreement commences, projects will be launched concerning 1) living wages and 2) climate change.
2. In doing so, the Parties are firstly aiming within an ambitious and realistic term of three to five years to achieve substantial improvements regarding specific risks in the food products chains for groups who are experiencing negative effects and, secondly, to offer a joint solution to problems in this area that businesses are unable to solve completely on their own.

Article 2 – IRBC risk management

1. The Industry Associations are working to bring about a process that will demonstrably strengthen IRBC risk management among their directly or indirectly affiliated members. They will support their members and provide them with recommendations and improvement possibilities identified by the Parties.

The **aim** is that all businesses affiliated directly or indirectly to the Industry Associations will, within the term of the agreement, implement IRBC risk management that is satisfactory in the situation of the business in question referred to in recital 17.
2. Guidelines and support

To support businesses, particularly SMEs, which need help in setting up their IRBC risk management and require information that can help them identify the negative effects or the risk of such in their value chain, as well as information about the possibilities to eliminate these negative effects or the risk of such:

- a. within three months of the signing of the agreement, the Parties will develop more detailed guidelines – on the basis of the OECD/FAO Guidance for Responsible Agricultural Supply Chains – that can help businesses in the food products sector in setting up and/or strengthening/improving their IRBC risk management, including the communication/reporting. These guidelines will include a characterisation of operational situations, on the basis of the distinctive aspects referred to in recital 17, partly to clarify what IRBC risk management means for SMEs. As regards transparency, for those business for which it is useful, a project will be launched in which forms of and focus points for business transparency are identified and brought to the attention of businesses;
- b. the Parties will generate IRBC information per theme, including advice and courses of action for tackling specific risks in the chain. This information will be included in the guidelines and will be updated annually by the Parties. Appendix 3 to this agreement outlines the contents of this thematic information;
- c. Industry Associations may benefit from the expertise of the other Parties for drawing up specified guidelines for their members;
- d. the Parties will jointly compile an overview ('matrix') in which frequent IRBC risks, product chains and countries are interlinked to help businesses in signalling and prioritising risks and by offering courses of action.

Involving members of Industry Associations

To involve their members in the agreement¹:

- e. the Industry Associations will refer to the aim of and the arrangements in the current agreement at all relevant meetings with their members. They can call on public authorities, Unions and NGOs involved in the current agreement to provide explanations during these meetings;
- f. in the first year of the agreement, the Parties, together with members of CBL, will launch a project devoted to living wages, and in any event a project with members of FNLI devoted to climate change, and in any event a project with members of KNVS at the interface of climate change and living income. The businesses that will be involved by the Industry Associations in these projects will be willing in these projects to share on a confidential basis and within the limits of the competition rules the

¹ The Industry Associations are a Party to the agreement. They will ensure that their members play an active role in the performance thereof. That will take place in several ways: in regular contacts of the Industry Associations with their members; in thematic projects; in stakeholder meetings; when jointly dealing with problems that arise during or as a result of IRBC risk management and when providing information about the progress of the introduction of IRBC risk management.

relevant chain information with the Parties. The competition rules are explained in Appendix 4 to this agreement.

The thematic projects are described in Appendix 2. They have the following aims:

- i identifying specific courses of action for businesses in order to tackle these systemic issues together with the Parties;
 - ii strengthening and improving IRBC risk management with regard to these specific subjects;
 - iii gaining insights for the purpose of a) implementing IRBC risk management in general and b) setting up and implementing other thematic projects;
- g. the Parties will in principle meet twice a year for constructive stakeholder dialogue concerning, for instance, the structuring of IRBC risk management, with a (for the subjects on the agenda) relevant number of businesses that are directly or indirectly affiliated to the Industry Associations. During the dialogue, the businesses involved by the Industry Association will be expected to be transparent about the aspects of their business operations that are relevant for the subject, on a confidential basis and within the limits of the competition rules. These meetings will be organised by the Steering Committee and the details will be worked out jointly by the Parties. These meetings will be important learning and inspiration sessions, in which, for instance, 1) experiences are exchanged about the lessons learnt in the thematic projects and the possible strengthening and improvement of the IRBC risk management of businesses, 2) an active relevant contribution is made by NGOs, with specific proposals being put forward to improve the IRBC risk management process at businesses, and 3) all subjects that the Parties consider important for making food chains more sustainable can be placed on the agenda;
- h. in the Steering Committee meeting, the Parties will make recommendations on the basis of the output of the stakeholder dialogue for strengthening the IRBC risk management of individual or groups of businesses. The Industry Associations will encourage their members to comply with these recommendations and will report to the Steering Committee on the monitoring thereof. Partly on the basis of the annual monitoring results, the Steering Committee may decide to launch new projects or thematic projects, as described in Article 2.2.f. Industry Associations will make an effort to ensure that businesses that are involved with these themes participate in such projects.

Access to remedy

- i. In the first year of the agreement, in a working group set up by the Steering Committee, the Parties will assess how, in accordance with the UNGPs and the OECD guidelines, access to remedy (access to recovery, compensation, redress, etc.) can be advanced for those experiencing negative impact in the food products value chain. The recommendations of the working group will be submitted to the Steering Committee for a decision. This arrangement does not mean that the Parties will be prejudicing the task of the National Contact Point for the OECD guidelines to contribute to solving issues that arise in specific cases when the OECD guidelines are applied.

Early warning

- j. With a view to early warning, the Parties will actively submit up-to-date information about abuses in the food products chain for discussion in the Steering Committee. The Steering Committee will take a decision about a suitable course of action of the Parties in the context of the agreement.

Cooperation with other initiatives and players

- k. Where possible, the Parties will cooperate with international initiatives aimed at making commodity chains that are important for the food products sector, more sustainable.
- l. On the basis of the experiences gained in implementing the current agreement (IRBC risk management and thematic projects), the Parties will make a joint effort, where necessary, to argue for an improvement in the contents or application of frequently used quality marks, standards and certificates. After all, as one of the specific details of their responsibility to implement IRBC risk management, businesses can use quality marks, standards and certificates, if and in so far as they are effective tools for tackling identified risks.
- m. The Parties will jointly enter into dialogue with commodity traders about their role in IRBC risk management in the food products sector in the light of the obstacles experienced by businesses affiliated directly or indirectly to the Industry Associations when implementing their IRBC risk management.
- n. In the event of new legislation or other urgent developments that influence the purpose of the agreement, NGOs, Unions and the Government are willing to take joint initiatives intended to help the members of Industry Associations implement any actions that this legislation or these developments demand of businesses.

Article 3 – Monitoring and progress report

1. For the purpose of monitoring the progress of the agreement:
 - a. the Parties will report to the Steering Committee on the efforts they have made and the results they have achieved, and the Industry Associations will also report on the efforts made and the results achieved by their members, in particular with regard to the recommendations referred to in Article 2.2.h;
 - b. the progress of IRBC risk management will be monitored at individual businesses in the sector in the light of the aim of the agreement referred to in Article 2.1. In principle, the Industry Associations will provide the information required for that purpose in the form of aggregated data. They will supply the names of the businesses on which they based the aggregation confidentially to the Secretariat and will retain the information supplied individually by these businesses to the Industry Association in order to permit a random verification by an independent agency during the mid-term and final evaluation of the agreement²;
 - c. for the benefit of the decision-making process of the Parties concerning any extra support needed for businesses, the Industry Associations will supply the Steering Committee with information about the problems or obstacles experienced by directly or indirectly affiliated members in setting up IRBC risk management and in tackling specific identified negative effects, or the risk of such;
 - d. the Parties participating in the thematic projects will jointly report to the Steering Committee on the project activities and the results achieved.
2. For monitoring progress, in accordance with Article 3.1.b, in the context of their operational situation an assessment will be made of the extent to which businesses can already supply proper answers to the questions in Appendix 1 for the purpose of IRBC risk management.³ For that purpose, the Parties will adopt a cost-effective method as soon as possible during the first year of the agreement on the basis of the characterisation of operational situations referred to in Article 2.2.a. The method will also give businesses the opportunity to provide insight into the risk management.

² Information issued by businesses to Industry Associations cannot be shared with other Parties, businesses or third parties without permission of those businesses.

³ We are talking here about process monitoring. The actual answer to the questions is not registered in the monitoring. However, an assessment must be made (and checked during the verification) as to whether the purport of the answer (the type of data available to the business, the way in which the business actively applies that data in the IRBC risk management process and the demonstrable operational process elements of the IRBC risk management) is satisfactory within the framework of the IRBC risk management required in the context of the business.

- a. The Dutch Association of Food Trade Organisations (CBL) will monitor the situation and progress annually at all its members in accordance with this method and report on an aggregated basis to the Secretariat.
 - b. The Dutch Food Industry Federation (FNLI) will:
 - ask all its directly or indirectly affiliated businesses each year to report their situations in accordance with this method;
 - on the basis of the method, obtain additional information about the situation at the members from joint and individual discussions with businesses and sector organisations;
 - ensure that in this way or in another way in accordance with the method, information is available about 50 different businesses each year, spread across the different types of operational situations;
 - report the situation and progress at its members based on this information to the Secretariat.
 - c. the Royal Dutch Spice Association (KNVS) will ask all its members each year to report their situations to the Secretariat in accordance with this method. The Secretariat will report to the Steering Committee on behalf of the Royal Dutch Spice Association on an aggregated basis.
 - d. An initial monitoring will take place at the end of the first year of the agreement period, on the basis of the information obtained by the Industry Associations in the manner described above.
3. The Secretariat will draw up an annual progress report for the benefit of the decision-making process in the Steering Committee. This report will present the findings pursuant to Article 3.1., and these will constitute – supplemented by the indications received from the early warning approach (Article 2.2.j) and the stakeholder meetings (Article 2.2.g) – the basis for recommendations for activities in the context of the agreement. The Steering Committee will take this as a basis for the efforts and activities planning for the following year.
 4. The Steering Committee will publish an annual report on the progress of the implementation of the agreement.
 5. At the end of the second year and at the end of the fifth year of the agreement period, the Steering Committee will instruct an independent agency to perform a mid-term review and final evaluation respectively of the effectiveness of the agreement as regards IRBC risk management, both in a general sense and with respect to the thematic projects. This analysis will also include the above monitoring results and a random verification of these results.
 6. For the progress of IRBC risk management at businesses that are directly or indirectly affiliated to the Industry Associations, the Parties have agreed on the

mid-term review criterion that at least 110 business will perform IRBC risk management in accordance with the description in the agreement (Appendix 1). For each industry association separately, these businesses will represent at least 50% of the total turnover of their members. Within three months of the agreement coming into force, they will make further arrangements regarding the operationalisation of this criterion.

7. If the mid-term review gives rise to serious doubts in the Steering Committee regarding the feasibility of the aims of the agreement or the suitability of the monitoring information as a basis for conclusions regarding the feasibility of the aims, the Parties will hold consultation about supplementary arrangements. In that case, the Industry Associations will submit an action plan to the Steering Committee in which they indicate how in their opinion the aims of the agreement can still be achieved. On the basis of this action plan, the Steering Committee will submit a decision proposal to the meeting of the Parties to the agreement regarding the changes required to its work plan or to the agreement.

Article 4 – Boosting the involvement of businesses

1. The Industry Associations are making every effort to ensure that all directly or indirectly affiliated businesses commit themselves to the arrangements in this agreement. They will inform all directly or indirectly affiliated members of the agreement and its significance within three months of its signing. In the case of the FNLI, the board members are also the representatives of the sector associations affiliated to the FNLI, and are prepared to act within their sector as ambassadors of the agreement.
2. The importance of complying with the agreement will be a regular item on the agenda at general meetings and board meetings of the Industry Associations.
3. CBL, FNLI and KNVS will ensure that for the success of thematic projects jointly launched by all Parties during the agreement period, sufficient numbers of members will participate.
4. The Industry Associations will also ensure the participation of a satisfactory representation of their members at the stakeholder meetings.
5. The joint Parties will actively approach businesses that are active in the food products sector in the Netherlands, but which are not affiliated to CBL, FNLI or KNVS, to have them declare their support and commitment to the agreement. Action will be taken for this purpose within six months of the signing of the agreement.

6. If all or part of a sector lags behind in making progress, the Industry Associations will call the sector or that part of it to account directly and point out that the agreement was signed also on their behalf.
7. The progress of the agreement will be discussed annually in administrative consultations between the Minister of Foreign Trade and Development Cooperation, the Minister of Agriculture, Nature and Food Quality the directors of the Unions and NGOs involved and the directors of Industry Associations in the sector. A public report of these consultations will be drawn up.

Article 5 – Role of NGOs, Unions and the Government

1. The NGOs and Unions:
 - will, in general and where possible, make their knowledge and expertise available in the context of the aim of the current agreement;
 - will actively draw the attention of their members, coalitions and national and international networks to the arrangements and basic principles in this agreement;
 - will bring new insights that are important for the IRBC risk management of businesses in the food products sector to the attention of the Parties via the Steering Committee and place them on the agenda if action or joint action by the Parties is necessary, e.g. the launch of a thematic project;
 - will, in particular, make an active contribution to the thematic projects to arrive at courses of action for businesses;
 - will engage their own local networks for the benefit of the projects;
 - are willing with respect to current cases to share knowledge with other Parties and businesses that are affiliated to the Industry Associations;
 - are prepared, in accordance with Article 2.2.j, to report any wrongdoings identified in the sector to the Steering Committee in a timely manner (early warning);
 - will, where possible, make information accessible to businesses about projects with local partners at the origin of the production chains. In cases where these projects are specifically relevant for the food products sector, they will indicate whether and how businesses can participate;
 - are willing at the request of the Industry Associations to participate in workshops/meetings with businesses concerning IRBC risk management. The Parties will consult about which NGO or union can best participate in the case in question;
 - will actively support the other Parties in approaching businesses in the food products sector that are not affiliated to the Industry Associations;

- will contribute their knowledge and expertise in the context of arriving at the guidelines referred to in Article 2.2.a and the thematic information referred to in Article 2.2.b for the benefit of the IRBC risk management of businesses in the food products sector;
 - will contribute to the creation of a matrix as described in Article 2.2.d.
2. As a supplement to the arrangements to which the Parties commit themselves in the agreement, the Government:
- will, in accordance with Article 2.2.j, report to the Steering Committee in good time any indications (at the missions) of abuses in the sector (early warning) and share current developments in the Steering Committee with the other Parties;
 - will bring new insights that are important for the IRBC risk management of businesses in the food products sector to the attention of the Parties via the Steering Committee and place them on the agenda if action or joint action by the Parties is necessary, e.g. the launch of a thematic project;
 - will use the network of missions for the benefit of the Parties, where appropriate, for any verification of indications of abuses in the sector;
 - will facilitate local and other information provision and contact with local and other public authorities;
 - will actively participate in the thematic projects, as described in Article 2.2.f;
 - will, together with other Parties, actively approach businesses in the food products sector that are not affiliated to the Industry Associations;
 - will place the debate about competition and sustainability on the agenda at European level;
 - will commit itself to Socially Responsible Procurement (SRP) as laid down in the Socially Responsible Procurement Manifesto;
 - will make an effort to include the IRBC agreement in the amendment of the criteria for SRP of catering services, partly in the light of the lessons learnt from initiatives and pilots relating to SRP in other sectors, e.g. in the natural stone sector;
 - will contribute to the creation of a matrix as described in Article 2.2.d.

FTDC:

- will use the network of missions and economic diplomacy to support the signatories to this agreement in implementing their IRBC policy, mainly by providing information on IRBC within the local context and focusing on economic RBC diplomacy as part of their economic relations;

- will actively inform the Dutch House of Representatives about the importance of the agreement in the light of the Government's sustainability and IRBC policy;
- will, as part of Dutch policy in bilateral and multilateral relationships, proactively promote the agreement at international level (EU, OECD, ILO, UN) in order to encourage others worldwide to follow the example of this cooperation between public, private and civil-society partners, to contribute to an international level playing field for IRBC risk management, and to facilitate that these relationships can be called upon, if necessary, in the context of this agreement;
- will call on EU and OECD member states to work in accordance with OECD guidelines and UNGPs and to ensure proper enforcement of existing legislation that must serve as a basis at local level for the themes relevant to this agreement;
- will boost IRBC on a broad basis via trade missions and, where legally possible, tenders;
- will organise an annual meeting in the context of the current agreement with agricultural councils in countries where commodities are sourced that are relevant for the implementation of the current agreement.

Article 6 – Applicable law and enforceability

1. The arrangements in this agreement will be implemented by all Parties in accordance with the applicable international, European and national law.
2. The following appendices to this agreement are an integral part of this agreement:
 - Appendix 1: Essential questions for IRBC risk management;
 - Appendix 2: Description of thematic projects;
 - Appendix 3: Format for IRBC risk management information per theme to be made available by the Parties to businesses;

In the case of conflict between the provisions in an appendix and the agreement, the agreement will prevail.
3. This agreement is not enforceable in law.

Article 7 – Disputes resolution

1. The Parties will not communicate publicly about their disputes as long as the disputes procedure is continuing.

2. If a dispute arises between two or more Parties relating to compliance with the arrangements in this agreement, these Parties will first attempt to resolve their dispute bilaterally.
3. If they do not succeed in reaching a solution bilaterally, the Party or Parties that believes or believe a dispute exists will inform the other Party or Parties of such in writing. The notification will include the details of the dispute.
4. Within 20 working days of the date of the notification referred to in the third paragraph, each party will submit its view of the dispute, as well as a proposal for a solution, to the other Party or Parties.
5. Within 10 working days of the end of the period referred to in the fourth paragraph, the Parties will consult in the Steering Committee regarding a solution of the dispute. Each Party may be assisted by experts.
6. The Steering Committee will take a decision regarding the dispute within two months. The Steering Committee will communicate its decision to the Parties between which the dispute has arisen. The decision of the Steering Committee will be binding on these Parties. However, it is not enforceable in law.
7. The decision and the communication from the Steering Committee must contain the following:
 - a. an overview of the findings and conclusions of the Steering Committee with respect to the dispute, as well as the reasons and grounds for those findings and conclusions;
 - b. if applicable, a substantiated request to a Party to end the non-compliance with the arrangements in this agreement;
 - c. if applicable, a reasonable period in which to end the non-compliance, depending on the seriousness of the non-compliance, but in principle within six months.
8. The Parties between which the dispute has arisen will comply with the decision of the Steering Committee within the set period.
9. If a Party that is involved in the dispute does not comply with the decision of the Steering Committee within the set period, the Steering Committee will meet with this Party as soon as possible. If the procedure followed has not resulted in a solution to the dispute, the Parties may terminate their participation in this agreement with due observance of a notice period of two months. The third and fourth paragraphs of Article 11 will apply accordingly.
10. Each party will bear its own costs, resulting from the procedure from the third up to and including the ninth paragraph.

Article 8 – Funding

1. The funding of the implementation of this agreement is based on a budget which is agreed upon by the Parties.

Article 9 – Governance

Meeting of Parties to the agreement

1. All Parties are entitled to participate in the meeting of Parties to the agreement. The meeting of Parties to the agreement will establish a Steering Committee.
2. The meeting of Parties to the agreement will decide on the basis of consensus regarding amendments to the agreement or the accession of new parties.
3. The meeting of Parties to the agreement will approve the annual work plan of the Steering Committee and will grant annual discharge for the policy conducted by the Steering Committee.
4. The meeting of Parties to the agreement will advise the Steering Committee regarding its decisions relating to new projects, initiatives and cooperation with other Parties and about the termination of projects being implemented in the context of the agreement.

Steering Committee

5. The Parties will submit issues that they consider require an urgent response, and that are relevant for the Parties and the agreement, to the Steering Committee for a decision.
6. Four groups are represented within the Steering Committee: Industry Associations, Unions, NGOs and the Government. The Industry Associations have four representatives, the other groups each have two representatives in the Steering Committee.
7. The Steering Committee oversees compliance with the agreement on behalf of the Parties and supervises its implementation. It determines its own working method in its first meeting.
8. The Steering Committee has an independent chair, not connected to any of the Parties, who will be chosen by the Parties by consensus. The chair will not have a vote.

9. The Steering Committee will endeavour to take decisions based on consensus⁴. Unless urgency dictates otherwise, a matter on which no consensus is possible will be tabled again at the next meeting of the Steering Committee. In the meantime, the chair will attempt to reach a compromise. If no consensus is reached a second time, the Steering Committee will decide on the basis of majority vote, unless consensus can be reached regarding the removal of the subject from the agenda.

Tasks of the Steering Committee

10. The Steering Committee will decide on new projects, initiatives and collaboration with other Parties that can strengthen the implementation of the agreement or will take decisions on the completion or termination of projects being implemented in the context of the agreement. Proposals to this end will be explained in the six-monthly meeting of parties to the agreement.
11. The Steering Committee will publish an annual report on the progress of the implementation of the agreement and the results achieved.
12. The Steering Committee will organise a meeting of parties to the agreement twice a year at which the progress of the agreement will be discussed.
13. Whether or not immediately following the meeting of Parties to the agreement, the Steering Committee will in principle organise a stakeholder dialogue twice a year as described in Article 2.2g.
14. The meeting of parties to the agreement and the stakeholder dialogue will be chaired on a non-participatory basis by the chair of the Steering Committee.
15. The Steering Committee will set up an 'access to remedy' working group, as referred to in Article 2.2.i., as soon as possible after the signing of the agreement.

Secretariat

16. The Steering Committee will be assisted by a Secretariat in the performance of its work. Agreements about this will be determined separately at a later stage.

⁴ 'Consensus' will be understood to mean a situation in which no party has a prohibitive objection to a decision.

Final provisions

Article 10 – Term

1. This agreement will take effect on the date of signing by the Parties.
2. This agreement will have a term of five years, starting on the date referred to in the first paragraph.
3. No later than six months before expiry, the Parties will enter into consultations about continuing this agreement. If no decision is taken on continuation, the agreement will end upon the expiry of the term.

Article 11 – Termination

1. Participation in this agreement may be terminated in writing, stating the reasons, by any of the Parties from two years after the signing, with a notice period of two months.
2. If, within two years of signing, a change in circumstances has occurred for a Party such that participation in this agreement should reasonably terminate within a short period, that Party may cancel participation in the agreement in writing, with due observance of a notice period of two months. The notice of termination must specify the change in circumstances.
3. If a Party terminates participation in the agreement, the agreement will continue to be valid for the other Parties in so far as its content and purport do not prevent it from doing so.
4. In the case of termination of participation in the agreement in accordance with the provisions of this article, none of the Parties will be liable for compensation with respect to another Party.

Article 12 – Accession of other parties and participation of supporters

1. This agreement allows the accession of other parties that can contribute to achieving the aims stated in this agreement by the Parties. The meeting of parties to the agreement will decide on the accession of new parties.
2. An acceding party will notify the Steering Committee in writing of its request for accession. As soon as the meeting of parties to the agreement has approved the request for accession, the acceding party will be given the status of Party to

the agreement and that Party will be subject to the rights and obligations ensuing for it from the agreement.

3. The request for accession and the statement of approval will be attached to the agreement as an appendix.
4. Parties that endorse the aims of the agreement and are willing to make a contribution to such, but that are unable or unwilling to bear administrative responsibility, can participate in the agreement by signing a declaration of support.

Article 13 – Confidentiality and disclosure

1. The Parties mutually undertake to observe confidentiality regarding information exchanged or to be exchanged in the context of this agreement or the performance thereof and to refrain from disclosing all or part of this information to third parties, except in so far as a disclosure obligation ensues from law, a legal ruling or this agreement.
2. The Parties will jointly coordinate their public communication about this agreement and the performance thereof and will make further arrangements about such within two months of this agreement taking effect.
3. Within two months of the signing of this agreement, the substance thereof will be published in the Dutch Government Gazette (*Staatscourant*). The Government Gazette will also state where the text of the agreement can be requested.
4. The accession or termination of participation of a party will be announced in the Government Gazette.

Signed in The Hague on 29 June 2018

Ms. Sigrid Kaag

Minister for Foreign Trade and Development Cooperation

Ms. Carola Schouten

Minister of Agriculture, Nature and Food Quality

Mr. Marc Jansen

Dutch Association of Food Trade Organisations

Mr. Bas Alblas

Dutch Food Industry Federation

Mr. Paul de Rooij

Royal Dutch Spice Association

Mr. Tuur Elzinga

Dutch Trade Union Confederation

Mr. Arend van Wijngaarden

National Federation of Christian Trade Unions in the Netherlands

Mr. Wim Hart

ICCO Cooperation

Mr. Frans Roselaers

Global March Against Child Labour

Ms. Rina Molenaar

Woord en Daad Foundation

Mr. Joost Oorthuizen

IDH Sustainable Trade Initiative Foundation



Appendices

Essential questions for IRBC risk management

Following the OECD/FAO *Guidance for Responsible Agricultural Supply Chains* ('OECD/FAO Guidance').

With reference to step 1 of OECD-FAO Guidance, 'Enterprise Management Systems':

1. Has the business formulated and communicated, partly on the basis of the OECD-FAO Guidance, its own basic principles for International Responsible Business Conduct for itself (the staff), for its clients, suppliers and other stakeholders in its production chain?
2. How have these principles and the need to be able to perform careful IRBC risk management been incorporated into the organisation of the business and the way in which the business deals with suppliers, purchasers (clients) and stakeholders in the value chain?
3. In what way is the business receptive to complaints from victims in its value chain and/or in what way does it ensure access for victims to complaints instruments elsewhere in the chain?

With reference to step 2 of the OECD-FAO Guidance, 'Identify, assess and prioritise risks':

4. Does the business, partly on the basis of public sources, as indicated in the Guidance and by the agreement parties in the guidelines, and via local and other stakeholders, have insight into the following data?
 - a. the commodities used in its products and the possible negative effects of the production (e.g. energy or water use, or poor working conditions or child labour when cultivating, producing, growing, plucking, etc.) or use of these commodities;
 - b. the countries/regions where its goods are produced, or where its commodities are sourced and the social risks/problems (e.g. corruption, child labour) in those countries, with which the business may become involved via the import of products and commodities (i.e. possible negative effects);
 - c. knowledge of the supplier and its own suppliers. Per country: which suppliers and commodity suppliers are involved (address details) and what quantities are obtained there, either directly or indirectly;
 - d. any negative effects on health or otherwise caused by the goods produced by the business in the use phase (at consumers)?

5. Can the business indicate, with the help of these data, with which negative or possible negative effects it is actually associated via its value chain? Is this a case of ‘causing’, ‘contributing to’, or ‘indirectly linked with’? What are the results of the risk analysis, specifically with respect to risks relating to:
 - human rights;
 - labour rights (including child labour, forced labour, trade union rights, discrimination and living wages);
 - health and safety;
 - food security and nutrition;
 - land rights and access to natural resources;
 - environmental protection and sustainable use of resources.
6. Can the business provide a proper explanation of how it has arrived at a prioritisation with respect to the risks listed, on the basis of the following questions:
 - a. What is the likelihood of a negative effect?
 - b. How severe is that effect in terms of its extent, the number of people affected and the possibility of the consequences being irreversible?

With reference to step 3 of the OECD-FAO Guidance, ‘Strategy’:

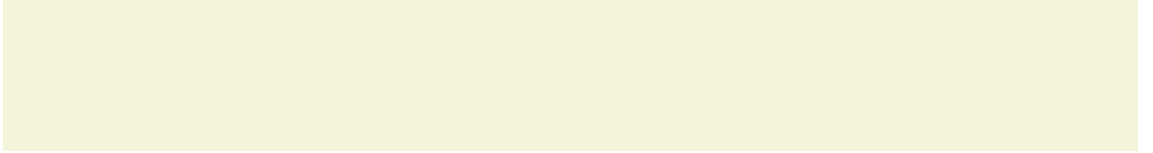
7. What measures will the business take, particularly with regard to one or more of the risks that was or were prioritised on the basis of the above procedure? Including:
 - a. Can the business indicate how its measures will result in removing (or reducing) the negative effects?
 - b. Has the business followed the recommendations made by the parties to the agreement? If not, does the business have good reasons for this?
 - c. If the parties to the agreement have launched a joint project with regard to this risk, is the business participating? If not, does the business have good reasons for this?
 - d. If specific circumstances present an obstacle for an individual business to taking appropriate measures to counter an identified negative effect in its chain on a temporary or permanent basis, can the business substantiate this situation clearly and transparently?
8. Has the business established ambitious improvement objectives to counter the risks in question? Are these objectives being monitored and taken into consideration in the policy decisions of the business?

With reference to step 4 of the OECD-FAO Guidance, 'Verify':

9. How does the business ensure that a process of continuing improvement is in place? For example: are the results of the measures being verified; is the approach being adjusted, if necessary based on the results of the verification; is the risk analysis being periodically reviewed?

With reference to step 5 of the OECD-FAO Guidance, 'Report':

10. To what extent does the business provide transparent information to the public regarding the implemented IRBC risk management (including tackling risks)?



Description of thematic projects

Living wages

The Parties acknowledge that:

- Living wages is a crucial theme: progress and improvement regarding this theme are vital.
- Living wages is a theme that in many cases cannot be addressed by individual businesses alone. For instance, many western businesses are only one of the many purchasers of a supplier in a production country. A joint approach is therefore needed.
- Living wages are likely to have a positive influence on other social themes, such as child rights/child labour, forced labour, overtime, as well as gender and other forms of discrimination.

The Parties agree:

- Immediately following the signing of the agreement, a working group will launch a pilot programme devoted to living wages. The working group will consist of representatives of: industry association CBL, the unions, the NGOs and the Ministry of Foreign Affairs.
- The programme duration is, in principle, five years and may be adjusted, if desired, by the working group:
 - The first half of that term is mainly intended to gain an understanding of how to tackle the problem of living wages and to provide businesses with courses of action.
 - The Parties are aiming, no later than the mid-term review after two years, to make specific arrangements about the objectives that the Parties wish to achieve – in terms of results on the ground – at the end of the agreement period (five years after signing).
- The Parties are aiming at least for learning effects regarding the following aspects:
 - Contributing to capacity building, e.g. for collective wage negotiations.
 - Contributing to living wages in chains where businesses can exercise influence in various ways (because they are either the only purchaser of a supplier or one of the many, which requires a totally different approach).
 - Developing a landscape approach, with the living wages approach having positive effects on a certain region (and links being sought to other initiatives and agreements).

- Sharing knowledge about various methods for calculating living wages and the application of such.
- The working group is responsible for organising knowledge sessions and setting up projects. The working group can leave those activities to a sub-working group in which other Parties to the agreement can also participate, as well as businesses and/or stakeholders that have signed the declaration of support.
- After five years, five projects will have been completed in any event, in which at least five supermarket organisations will participate (possibly represented by the purchasing organisation).
- Projects will take place in cooperation with Parties to the agreement and their local partners, as well as quality marks and/or initiatives relevant to the theme. Links will be sought to existing projects and these will be built on as much as possible.
- The programme will start in the first year after signing with two projects. During the course of the programme, new projects will be launched on the basis of lessons learnt from previous projects. In this way, a learning process takes place that is relevant to all those involved.
- The projects will be selected by the working group on the basis of the following questions:
 1. In which chain/region is the living wages theme a risk for businesses participating in the pilot?
 2. In which chain/region can Parties to the agreement or organisations that have signed the declaration of support contribute to tackling this risk on the basis of their own expertise and contacts?
 3. Is there a possibility in that chain/region to implement a pilot project devoted to one or more of the learning effects referred to above?
- The working group reports every six months to the agreement Steering Committee. The results will be discussed in the stakeholder meetings on RBC risk management, as defined in the agreement text.
- During the mid-term review of the agreement (two years after signing), the working group publishes the following on the basis of the lessons learnt from the projects:
 - guidelines for businesses for tackling the living wages theme, partly in the light of general RBC risk management for businesses;
 - an analysis of results and lessons for potential follow-up steps that businesses can take in order to continue to tackle living wages in their chains.
- The Parties will make arrangements for the financing of the projects.
- By implementing this programme, the Parties are not endeavouring to restrict the market or reduce competition. It is not their intention to restrict competition on the food products market to the disadvantage of consumers.

Climate change

The Parties acknowledge that:

- Climate change is a crucial theme in the food products sector. It is one of the largest risks associated with business operations in the food products industry.
- Climate change demands both mitigating measures and measures in the chain geared to adaptation.
- Climate change involves risks that cannot generally be countered by individual businesses. Cooperation between Parties is required, both as regards knowledge about reducing greenhouse gas emissions and when it comes to avoiding risks to production and income in developing countries.
- Mitigation of and adaptation to climate change have positive side effects on the possibilities of agricultural workers and farmers in developing countries to obtain an income both now and in the future and that removing uncertainties about this may have positive side effects on other themes, e.g. child labour.

The Parties agree:

- That during the first six months of the term of the agreement, the Parties will develop in a working group at least two specific projects for mitigation of and/or adaptation to climate change in one of more commodity chains, in which in any event members of KNVS, and/or FNLI and/or members of industry associations affiliated to FNLI will participate. The working group will consist in any event of representatives from FNLI, KNVS, the National Federation of Christian Trade Unions in the Netherlands, NGOs ICCO and Global March, and IDH and the ministries of Foreign Affairs and of Agriculture, Nature and Food Quality. In concrete terms, this will in any event mean:
 - describing climate change and its consequences in relation to the chain or chains of individual entrepreneurs in the food products sector and victims and potential victims;
 - describing how the project can contribute to courses of action for businesses in the Dutch food products sector as regards countering climate change (mitigation) and/or dealing with the negative consequences of climate change (adaptation), by means of an approach that demonstrates the added value of a joint initiative;
 - indicating which parties (in particular the Parties to the agreement) will make which contribution, as well as specifically stating the businesses that will participate;
 - planning, budgeting for and making arrangements about project financing.

- The project objectives are:
 - strengthening and improving IRBC risk management for climate change and its consequences: identifying risks and an approach for adaptation/mitigation;
 - identifying specific courses of action regarding climate adaptation/mitigation for businesses in cooperation with the Parties to the agreement;
 - formulating lessons that can be learnt from the cooperation in the thematic projects for a. implementing IRBC risk management in general and b. setting up and implementing other thematic projects.
- In principle, the working group is set up for two-and-a-half years, and this period may be extended by the Parties. The programme will start in the first year after signing with two projects. During this period, new projects can be launched on the basis of lessons learnt from previous projects or new information from the Parties or businesses about climate-related risks in the production chain or obstacles experienced by businesses in their IRBC risk management. In this way, a learning process takes place that is relevant to all those involved.
- For setting up projects, the working group focuses in the first instance on detailing and financing project proposals relating to:
 - making spices from Indonesia more sustainable (see the text box below for a project proposal summary);
 - setting up a network for sharing knowledge about reducing CO₂ emissions in the chain. By analogy with the chain manager for MEAT NL, a knowledge broker could be appointed to make existing knowledge about climate mitigation/adaptation more accessible to individual businesses. This broker could also pass on knowledge questions emerging from the IRBC risk management of businesses (e.g. regarding the influence that businesses may have on Scope III emission reduction (in their production chain)) to the relevant knowledge institutions;
 - increasing the climate-resilience of farmers in vulnerable chains. Examples include coffee, tropical fruit, cacao and aquaculture. Global warming and changing precipitation patterns mean that some cultivation areas are becoming less suitable and more susceptible to infections and damage. Transparent climate-proof indicators will be determined with purchasers of commodities from these chains. In addition, a course of action for the ‘climate neutral’ claim and concept will be developed.
- By setting up projects, the Parties are not endeavouring to restrict the market or reduce competition. It is not their intention to restrict competition on the food products market to the disadvantage of consumers.

Thematic project Spice Production in Indonesia, at the interface of 'climate change' and 'living wages'

Cinnamon, nutmeg/mace and pepper are frequently used spices in Dutch cuisine. These spices are produced in, for instance, Indonesia, by a large number of small-scale farms. Many of these farmers have difficulty in obtaining a living income. Partly due to insufficient knowledge about – and resources for – environmentally responsible plantation management, the yield per hectare is low. Moreover, climate change is resulting in extra income uncertainty in spice production. For instance, unexpected periods of draught compel the use of irrigation in Indonesia. Small farms cannot irrigate their plots independently and are insufficiently organised to do so jointly. As a result, they lose a large part of their annual income. The uncertainty regarding income leads to a wave of possible negative effects in the production chain. From the viewpoint of purchasers, that results in a lack of certainty regarding supplies. From the viewpoint of IRBC risk management, it is vital to expand this outlook to include possible negative effects for humans, wildlife and the environment in the production chain. Examples of these negative effects are:

- The poverty of the farmers and their families, which may mean that women and children have to help, often under poor working conditions, in order to obtain an income.
- Cinnamon, nutmeg and pepper are cultivated in areas with a relatively high biodiversity value that often act as a buffer zone between completely natural ecosystems and types of land use in which the biodiversity value is zero, such as the production of palm oil and rubber. For many small-scale spice farmers, however, palm oil and rubber are an alternative if they cannot obtain a living income with the cultivation of spices.

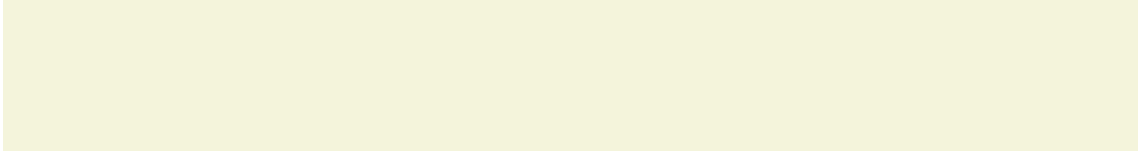
In the context of the IRBC agreement for the food products sector, the Royal Dutch Spice Association (KNVS), together with the other Parties to the agreement, is working on the creation and implementation of a road map for more sustainable spice production in Indonesia. In this road map, KNVS wishes to prioritise cinnamon, nutmeg/mace and black and white pepper. The road map outlines how, as a result of cooperation between the Indonesian government, Indonesian and Dutch businesses and NGOs, negative effects in the production chains of spices can be tackled in cases where individual members of the KNVS can exercise little influence. This road map will consist of a vision of – and objectives for – sustainable spice production in Indonesia and a coordinated programme with projects to achieve these objectives.

In implementing this initiative, the KNVS in the Netherlands will cooperate with parties including members of CBL, FNLI, the Baking and Confectionary Industry Association (*Vereniging voor de Bakkerijen en Zoetwarenindustrie* – VBZ) and possibly the Dutch Catering Organisation Association (*Vereniging van Nederlandse Cateringorganisaties* – VENECA) and Royal Dutch Catering (*Koninklijke Horeca Nederland* – KHN), because making spice chains more sustainable is possible only if sufficient demand can actually result in greater income security for Indonesian spice farmers. The Dutch government can help to involve the Indonesian government. Furthermore, use will be made of the experiences gained and synergy will be sought by alignment with the spice projects of the Sustainable Trade Initiative Foundation (IDH), ICCO and international development organisation HIVOS.

During the first phase of this initiative, the specific IRBC risks in the production chain of cinnamon, nutmeg and pepper in Indonesia will be mapped out within a year of signing and feasible courses of action for greater sustainability will be formulated that enjoy the support of Indonesian and Dutch stakeholders. This will be used as a basis for drawing up the road map, which will consist of a vision of – and objectives for – a more sustainable production of the above spices in Indonesia and an appropriate coordinated programme of joint activities.

Format for IRBC risk management information per theme to be made available by the Parties to businesses

1. Description of the theme/issue and the need to take action. What direction should it take?
2. How can you discover as a business that you are involved with the issue? In which cases/circumstances can it apply to your business? What are the indications? What are the sources (e.g. from the Parties themselves!) that can inform you? How do you put questions to your suppliers?
3. In the event of involvement: what action can you take? Individual actions, e.g. on the basis of existing tools, but also by cooperating or aligning with initiatives that transcend business boundaries (describe (extent of) usefulness of standards, certifications or projects outside or within the agreement).
4. With which indicators can you assess whether your measures are effective?
5. How can you communicate about your IRBC risk management for this theme?



Competition

1. Introduction

The Parties have expressed the need for a further explanation of the Food Products Agreement (referred to hereafter as “the Agreement”) and its implementation within the context of the competition rules. The intended Agreement will result in new forms of cooperation between the Parties, also including representative organisations and industry associations and their affiliated businesses. The Parties wish to avoid a situation in which this cooperation violates European or other competition rules.

The Parties will do so by paying heed to the contents of the competition rules and by assessing the text or draft text of the Agreement in line with these rules. The Parties will include a statement about this in the draft text.

To ensure transparency regarding possible issues during the implementation of the Agreement, the SER secretariat makes a distinction in this document between the way in which the Parties cooperate in the context of this Agreement (Section 2) and possible arrangements yet to be made by the Parties to implement specific projects in the context of this Agreement (Section 3).

2. Cooperation in the context of the Agreement

In order to achieve the aim of the Agreement, as described in Article 1, the Parties will have to cooperate and information will have to be exchanged between the Parties in question. The Parties will have to consider the way in which they will do so. For instance, the exchange of competition-sensitive information may, depending on the context, be contrary to the cartel prohibition in the Dutch Competitive Trading Act (*Mededingingswet*–Mw). The way in which the information is exchanged (orally, in writing, via e-mail or a website) is not relevant for an assessment under competition law.

Particularly in the context of monitoring and reporting on the IRBC risk management process of businesses, it may be necessary to inspect company-sensitive information of businesses. In the Agreement text, the Parties focus on the process of how to deal with this competition-sensitive information and take the necessary precautions to ensure that this information is not obtained by third

parties, particularly competitors. This can be effected by, for instance, structuring the monitoring process in such a way that specific company-sensitive information is anonymised and aggregated by an independent party (for instance a secretariat engaged for the implementation of the Agreement) prior to distribution so that it is no longer traceable to a specific business.

On the basis of the arrangements in the text or draft text of the Agreement, the risk of exchange of company-sensitive information that is contrary to the competition rules is relatively small because individual businesses will not be present during consultations and company-sensitive information of *individual* businesses will not be available in the Agreement process (this information will be handled via the sector organisation). NB A different or a further detailing of these arrangements in practice could increase this risk.

The Parties are also recommended to arrange at the start of the Agreement how they will conduct themselves during meetings that will be held in the context of the implementation of the Agreement, such as plenary sessions and consultations of steering committees and working groups. Examples include arrangement concerning criteria with which meetings and other discussions would have to comply, such as, for instance, the reading of an anti-trust statement¹.

3. Supplementary arrangements in the context of a project

To achieve the aim of the Agreement, the Parties will also make arrangements about specific projects that they will implement jointly. The structure, details and the specific intended result are not known at the time of the conclusion of the Agreement. It cannot therefore be stated in advance how such a project will relate to the competition rules. Assessing whether a cooperation initiative (relating to sustainability) is possible under the competition rules requires an individual approach.

It should be stated first and foremost that conflicts with competition rules do not occur until businesses make arrangements – or business associations take decisions – that restrict competition. Such arrangements are prohibited. If arrangements that result from a joint project do not influence competition, they are not contrary to the competition rules. Even if the arrangements do restrict competition but meet four

¹ In cases in which the SER runs the secretariat for the implementation of an IRBC agreement, such as in the case of the Garments and Textile Agreement and the Banking Agreement, the above arrangements were laid down in a Confidentiality protocol and an Agreement for Professional Services, both signed by the Parties and the SER.

cumulative conditions², they will be exempt from the cartel prohibition. A further explanation of the assessment framework is provided in Section 4 of this appendix.

An example of *do's and don'ts* has been drawn up on the basis of legal advice for labels which, taking account of competition rules, wish to cooperate in order to obtain a living wage for employees in the textile industry. These *do's* and *don'ts* are a useful indication of what is and what is not permitted on the basis of the competition rules, but they cannot automatically be applied to other sectors such as food products given the possible sector-specific differences.

When the time comes, the Parties will have to determine via a self-assessment whether their arrangements in the context of the project, in which businesses are involved within the meaning of the Dutch Competitive Trading Act, are in line with that Act. The Parties may decide to ask the secretariat provided for in the Agreement to assist them in this respect and/or, if necessary and desirable, to obtain external advice from a competition expert.

4. Assessment framework for competition and sustainability

Agreements and other arrangements for cooperation in the context of sustainable growth may be in conflict with competition rules. Competition rules are intended to guarantee a level playing field for competing businesses. Competition encourages businesses to offer products and services under the most favourable conditions in terms of both price and quality. Competition stimulates efficiency and innovation and creates a larger choice for consumers.

The competition rules allow various types of cooperation between businesses, but sustainability arrangements are not automatically exempt. In 2016, the Minister of Economic Affairs drew up a new policy rule regarding competition and sustainability with the aim of offering greater clarity regarding the assessment of sustainability arrangements by the Netherlands Authority for Consumers & Markets (ACM). The ACM has published a vision document to make clear which types of cooperation are permitted and which are not. In 2016, the ACM also published its basic principles for the application of the competition rules. The Minister of Economic Affairs is currently working on a legislative proposal entitled

2 1. the arrangement must contribute to the improvement of the production or distribution or must result in a technical/economic advancement; 2. the advantages resulting from the arrangements must reasonably benefit users; 3. competition may not be restricted more than is strictly necessary; and 4. sufficient competition must remain in the market.

“Scope for Sustainability Initiatives” to change the assessment framework for balancing the consumer interest (protected by the competition rules) against sustainability initiatives so that sustainability initiatives can be effected more frequently.³

4.1 Competition policy in a nutshell

Dutch competition law is rooted strongly in European competition law. Both the core articles of the Dutch Competitive Trading Act (Mw) and its most important concepts are derived from or refer to the provisions and interpretation of the Treaty on the Functioning of the European Union (TFEU). In many cases, European law has direct effect in the Member States and has preference over national law. This section focuses particularly on national competition policy and law.

The Dutch Competitive Trading Act applies only if the action in question can have effect on Dutch territory. However, businesses must take account of the fact that European competition legislation may also apply to activities on the Dutch market, provided that these activities influence the trade between Member States. If an action is contrary to both the Dutch Competitive Trading Act and the European competition rules, the European Commission may act as enforcer rather than the ACM. The ACM also has the authority to apply European competition rules in the Netherlands.

A business that violates the Dutch Competitive Trading Act can be fined for doing so. In that case, the ACM can impose personal fines on certain people who were involved in the violation. The civil court also plays a role in enforcing the competition rules. Stakeholders can request the court to declare an agreement void on the grounds of violation of the cartel prohibition or submit a request for compensation.

Dutch Competitive Trading Act

The Dutch Competitive Trading Act (Mw) applies to all businesses and entrepreneur associations that are active on the Dutch market. A decisive factor for the application of the Dutch Competitive Trading Act is that economic activities⁴ must be carried out.

3 See the response of the SER to this legislative proposal, together with that of the Consumers' Association and the Netherlands Society for Nature and the Environment, at:

<http://www.ser.nl/nl/actueel/nieuws/2010-2019/2017/20170706-duurzaamheidsinitiatieven.aspx>

4 An economic activity is 'every activity consisting of offering goods or services on a market'.

De Dutch Competitive Trading Act (Mw) prohibits:

- cartels (Section 6 of the Mw);
- misuse of a dominant economic position (Section 24 of the Mw);
- concentrations of businesses without prior reporting (Section 27 and Section 34 of the Mw).

This section focuses solely on the provisions relating to cartels.

Cartel prohibition

The cartel prohibition (Section 6(1) Mw/Article 101(1) TFEU) bans:

- competition-restricting arrangements between two or more businesses;
- competition-restricting coordinated actions between two or more businesses;
- competition-restricting decisions of corporate associations.

The term ‘arrangement’ is broad in scope. An arrangement does not have to be in writing and may be informal or tacit (e.g. an oral gentlemen’s agreement). An arrangement requires only consensus between the businesses in question regarding their commercial actions. The term ‘coordinated actions’ is even broader. This is already the case if, following contact, parallel actions of businesses are detected on the market.

There are types of cooperation that are harmless from a competition viewpoint because they do not relate to aspects that have a negative impact on the competition between businesses. The cartel prohibition bans arrangements that perceptibly restrict competition. Two types of competition-restricting arrangements can be distinguished:

- i arrangements that are intended to restrict competition (such as arrangements about sales prices, allocating customers or restricting the production or output). This refers to coordination of market actions that by its nature may be considered so damaging to competition that it is not necessary to investigate the effects of such; and
- ii arrangements that are not intended to restrict competition, but which nevertheless have competition-restricting consequences.

Some arrangements are not covered by the cartel prohibition due to the lack of *perceptibility*, because of, for instance, the slender nature of the joint market share of the businesses in question or the existence of sufficient alternative parameters on which the businesses compete with one another. Some issues are therefore more likely to be covered by the cartel prohibition than others: cooperation

arrangements in which, for instance, all businesses in one and the same sector are involved will be more likely to be damaging to competition than arrangements between a small section of the market. Arrangements between direct competitors ('horizontal agreements') are more likely to be damaging than arrangements between businesses that are not direct competitors ('vertical agreements'⁵).

All arrangements between businesses that do not perceptibly restrict competition are not covered by the cartel prohibition and are therefore permitted.

The cartel prohibition also contains a **de minimis provision**, which applies to arrangements that do not influence trade between Member States. The de minimis provision is a lower limit (Section 7 of the Dutch Competitive Trading Act).⁶ The cartel prohibition does not apply in any way below that limit. The Dutch Competitive Trading Act also includes a partial exemption for businesses that are charged with a task of general economic interest (Section 11 of the Mw). These businesses are exempt from the cartel prohibition to the extent that the prohibition obstructs the performance of that task.

Exception

The cartel prohibition also includes a statutory exception with direct effect (Section 6(3) Mw/Article 101(3) TFEU). Arrangements between businesses and even competition restricting arrangements between businesses can make a positive contribution to economic growth. This depends mainly on the details of the arrangement and the situation on the market in which the arrangement is made. The cartel prohibition includes an exception for arrangements that restrict competition, but which also generate economic advantages that outweigh the disadvantages of the competition restriction.

A business that invokes the exception must demonstrate that the competition-restricting arrangement meets the following four cumulative conditions:

1. the arrangement must contribute to the improvement of the production or distribution or must result in a technical/economic advancement;
2. the advantages resulting from the arrangements must reasonably benefit users;

⁵ A vertical agreement is an agreement between two or more businesses that are active in different phases (production, distribution) of a chain. A chain generally involves a producer, exporter/importer, wholesale trade, retail trade).

⁶ The limit is expressed in the number of businesses involved *and* a turnover limit, or in the joint market share of the businesses involved.

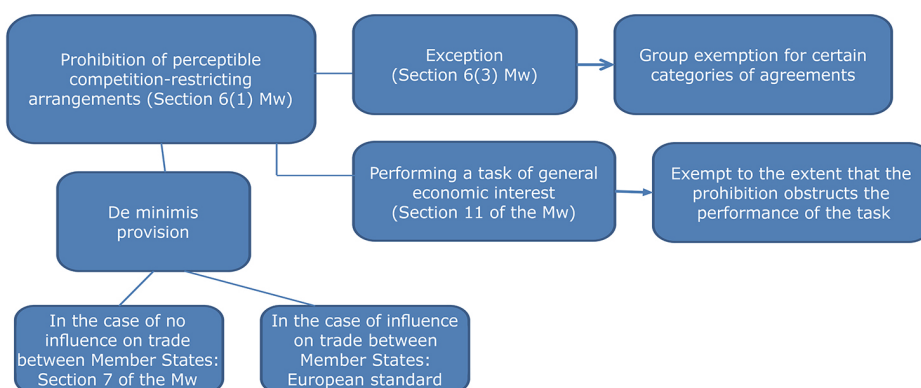
3. competition may not be restricted more than is strictly necessary; and
4. sufficient competition must remain in the market.

Businesses must investigate for themselves whether the statutory exception applies to their arrangements.

For some types of cooperation, **European group exemptions** apply with direct effect. This applies, for instance, to joint R&D, specialisation agreements and arrangements between businesses that do not compete. The conditions for the application of these group exemptions (e.g. the maximum market shares) are indicated precisely. Guidelines describe the group exemptions in greater detail.

Figuur 1.1

In summary, the following system is applied:



For more information:

- *ACM brochure Dutch Competitive Trading Act*
- *ACM brochure Cartel prohibition*
- *ACM Guidelines for Cooperation between Businesses (Richt snoeren Samenwerking Ondernemingen)*
- *European Commission – Guidelines on horizontal cooperation agreements*

4.2 Conflict between sustainability and competition

Sustainability is a broad term: it includes various subjects such as environmental protection, public health and fair trade production. Sustainability issues involve public goods and external effects. In many cases, some type of collective approach is required. The issue is whether this collective approach should be the responsibility of the government or private parties.

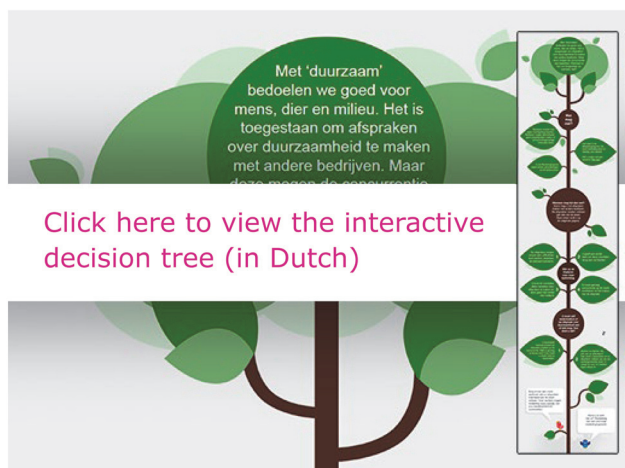
There may be various reasons for a role for businesses, possibly together with NGOs or the government:

- Legislation is not always efficient. In some cases the sector can act quicker and cheaper.
- An international governance gap sometimes exists: there is no legislation in other countries or it is not enforced. This is something the Dutch government cannot influence.
- Some international arrangements place the responsibility with businesses (e.g. OECD guidelines).
- Sustainability initiatives taken by businesses are often a response to pressure from society and are therefore the result of a civil-society process.

Sustainability and cooperation

If there is a role for businesses, cooperation is often required: it is not always possible or desirable for businesses to take individual sustainability initiatives because, for instance, higher production costs resulting from investments in sustainability may result in a competitive disadvantage, partly depending on the demand for sustainable products. In other cases, cooperation may be needed in order to have sufficient leverage or to obtain the required information. In some cases this cooperation may restrict the competition and then businesses will have to deal with the consequences of the Dutch Competitive Trading Act.

Assessing whether a cooperation initiative relating to sustainability is possible under the competition rules requires an individual approach. Businesses will have to determine via a self-assessment whether their arrangements are in line with the Dutch Competitive Trading Act. In addition to the Vision Document on Competition and Sustainability, the ACM has also published an interactive 'decision tree' on its website that assists businesses in making such an analysis.



The decision tree first defines what the ACM means by 'sustainability' (i.e. 'good for people, wildlife and the environment'). The decision tree then considers the following steps in brief and indicates: What may you not do? When is cooperation permitted? What conditions must the arrangements meet?

The decision tree explains that it is permitted to make arrangements about sustainability with other businesses. If an arrangement is not perceptibly competition restricting or does not meet all four conditions (of Section 6(3) Mw), the arrangement will not be contrary to the cartel prohibition. Businesses must make their own assessment. It is important for them to document the facts properly so that they can explain in detail why the arrangement is not perceptibly competition-restricting or why it meets the exemption conditions. Every case is different and details are often important for the prosperity and competition effects of an arrangement. The ACM website also provides examples of arrangements in practice.

Examples of what is and what is not allowed

Purchase obligation as part of the Bangladesh Fire and Safety Accord*

In the Bangladesh Fire and Safety Accord, a large number of international clothing labels have made arrangements to ensure long-term improvements regarding safety in clothing factories in Bangladesh. One of the arrangements provides for a purchase obligation for the clothing labels. Improvements in working conditions and the safety of employees mean that factories have to invest. To encourage these factories to actually make those investments, the clothing labels undertake to purchase certain volumes for at least two years.

Such a horizontal agreement between clothing labels reduces their competition when it comes to purchasing clothing. At the same time, sufficient competition remains between the clothing labels, e.g. competition parameters for which no arrangements have been made (such as purchasing and/or sales prices) and competition with regard to clothing from other countries. The arrangement also provides for a vertical agreement to be made between an individual clothing label and a clothing factory. Because clothing labels demand a safety investment from factories, it is only right that clothing labels provide factories with a guarantee that they can recoup their investment in safety. The purchase obligation, which is limited to two years, offers this guarantee and does not restrict the competition unnecessarily.

Chicken of Tomorrow**

Supermarkets, producers and processors have made arrangements about the sale of chicken meat with more benefits regarding chicken welfare, 'the Chicken of Tomorrow'. Part of those arrangements involves the removal from the shelves of broiler chicken meat produced in the standard manner.

This will result in a restriction of competition on the market for the sale of chicken meat to consumers. As a result of the arrangements, consumers should from 2020 no longer be able to purchase broiler chicken meat in Dutch supermarkets. The consumer's freedom of choice will therefore be restricted.

One of the conditions to be eligible for an exception to the cartel prohibition (Section 6(3) Mw) is that the advantages of the arrangements for consumers are greater than the disadvantages, such as the restriction of choice and a higher cost price.

* See: <http://schonekieren.nl/nieuws/2013/het-bangladesh-veiligheidsakkoord-een-baanbrekend-initiatief-voor-veilige-fabrieken/#informatie>

** See: <https://www.acm.nl/nl/publicaties/publicatie/13760/Afspraken-Kip-van-Morgen-beperken-concurrentie/>

ACM has investigated whether these measures in the arrangements for the Chicken of Tomorrow are appreciated by consumers. This investigation has shown that consumers are willing to pay for animal welfare and environmental measures, but not for the limited improvements of the Chicken of Tomorrow. On balance, those improvements do not provide consumers with an advantage. Consequently, the first of the four cumulative conditions for a statutory exception to the cartel prohibition has not been met. As a result, the arrangements for the Chicken of Tomorrow are inconsistent with the Dutch Competitive Trading Act.

For more examples, see the *ACM website*

For more information:

- ACM: interactive decision tree
- ACM memo 'The assessment of competition restrictions as a result of sustainability initiatives in practice'
- ACM Vision Document on Competition and Sustainability
- Brochure Fair Wear Foundation on do's and don'ts in the case of living wages

ACM has published its basic principles for monitoring sustainability arrangements and competition on its website

Sustainability and exchange of competition-sensitive information

In the case of a collective approach to a sustainability issue, the parties involved, including businesses, will hold discussions relating to various matters and it will often be necessary to share and exchange information. Moreover, the exchange of information between businesses, whether or not via a corporate association or an independent research agency, can help businesses to follow and to respond to general market developments.

However, the exchange of information can also result in an elimination of the normal uncertainty in the market regarding the market actions or intended behaviour of market participants and therefore to a deterioration of the competition. Uncertainty regarding the commercial and strategic policy of a competitor is an important incentive to innovate and to structure business operations more efficiently. Information exchange can result in businesses no longer determining their market actions autonomously and independently.

If there is an agreement between businesses, a coordinated action or a decision of an employers' association to exchange information, this information exchange may be contrary to the cartel prohibition. The way in which the information is exchanged (orally, in writing, via e-mail or a website) is not relevant for a ruling under competition law.

Whether the exchange of information will have a perceptible effect on competition will depend on the circumstances of the case in question: the nature, the frequency and the destination of the information exchanged on the one hand, and the market structure on the other. The greater the competition-sensitiveness of the information exchanged, the greater the likelihood of an unauthorised restriction of competition. Information becomes more competition-sensitive as and when:

- a. it relates to competition parameters such as prices, production, costs, sales and clients (e.g. strategic information about prices, client databases, production costs, quantities, turnover, sales, capacity, quality, marketing plans, risks, investments, technology);
- b. it is more detailed/the aggregation level is lower;
- c. it is more up to date or issued more frequently;
- d. it is not available to everyone.

Important structural characteristics that influence the competition-sensitiveness of information include the degree of concentration (the number and the size of the businesses active on the market), the nature of the product and the extent of product differentiation, transparency, stability, symmetry and complexity of the market, the existence or otherwise of market entry barriers, the growth of market demand and the cost structure.

Example of the exchange of competition-sensitive information

Transparency regarding the origins of coal*

In 2010, the Coal Dialogue** started following reports of poor working conditions in coal mines in Colombia. The dialogue had two aims, one of which was 'improving transparency in the coal chain for Dutch end consumers'. Energy companies would provide greater transparency regarding the mines from which they obtained coal for the production of electricity in the Netherlands.

* See <https://www.acm.nl/nl/publicaties/publicatie/13544/Advies-ACM-over-herkomsttransparantie-in-de-steenkolenenketen/>

** A dialogue with stakeholders, NGOs, unions and purchasers and suppliers of coal, concerning the responsible mining and purchasing of coal.

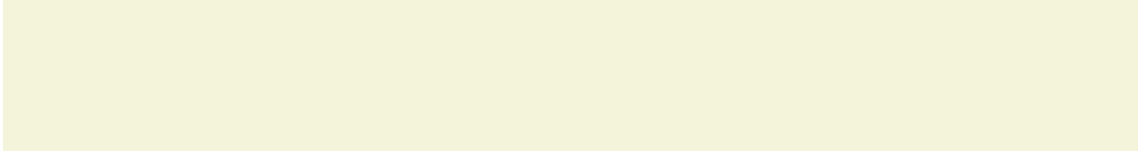
The exchange of individual data relating to the origins of coal between electricity providers meant that they had insight into one another's procurement strategy and in the cost price for coal because they obtained coal from the same mines or were able to request the cost prices. This was individualised information that was not normally disclosed and that made this information competition-sensitive. Furthermore, energy companies are players on a concentrated market. At that time, there were five electricity suppliers in the Netherlands that purchased coal for generating electricity. Furthermore, implementing the arrangement proved to be difficult from a practical point of view and the possible consequences of the origin transparency for Dutch electricity suppliers and consumers were considerable due to a restriction of purchasing possibilities (limited to market parties that could guarantee the origin of the coal).

ACM concluded that electricity suppliers could publish the origin of the coal voluntarily. However, conditions apply. It is important that the electricity suppliers do not obtain insights into current, individualised information at mine level regarding the origins of coal. A workable option in this case is that information about mines or mining areas is collected by a third party and processed to produce an overview of aggregated data. These data are therefore not communicated to the various energy companies and can no longer be traced to an individual energy company. The data are also supplied annually on a retrospective basis so that no up-to-date data are involved.

To avoid competition-sensitive data being exchanged between parties in the context of cooperation, e.g. in the case of an IRBC agreement, parties can take the necessary precautions. This can be effected, for instance, by ensuring that company-sensitive information is anonymised and aggregated prior to distribution so that it can no longer be traced to a specific business.

For more information:

- European Commission – Guidelines on horizontal cooperation agreements



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The negotiations were conducted by industry organisations, trade unions, NGOs and the Dutch government. The agreement has been drawn up under the direction of the SER.

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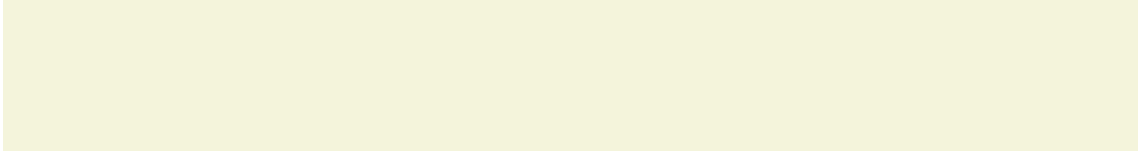
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