

# Dutch Banking Sector Agreement on international responsible business conduct regarding human rights



Ministry of Foreign Affairs



Dutch  
Banking Association



Ministry of Finance



# **Dutch Banking Sector Agreement** on international responsible business conduct regarding human rights

## The Social and Economic Council in the Netherlands

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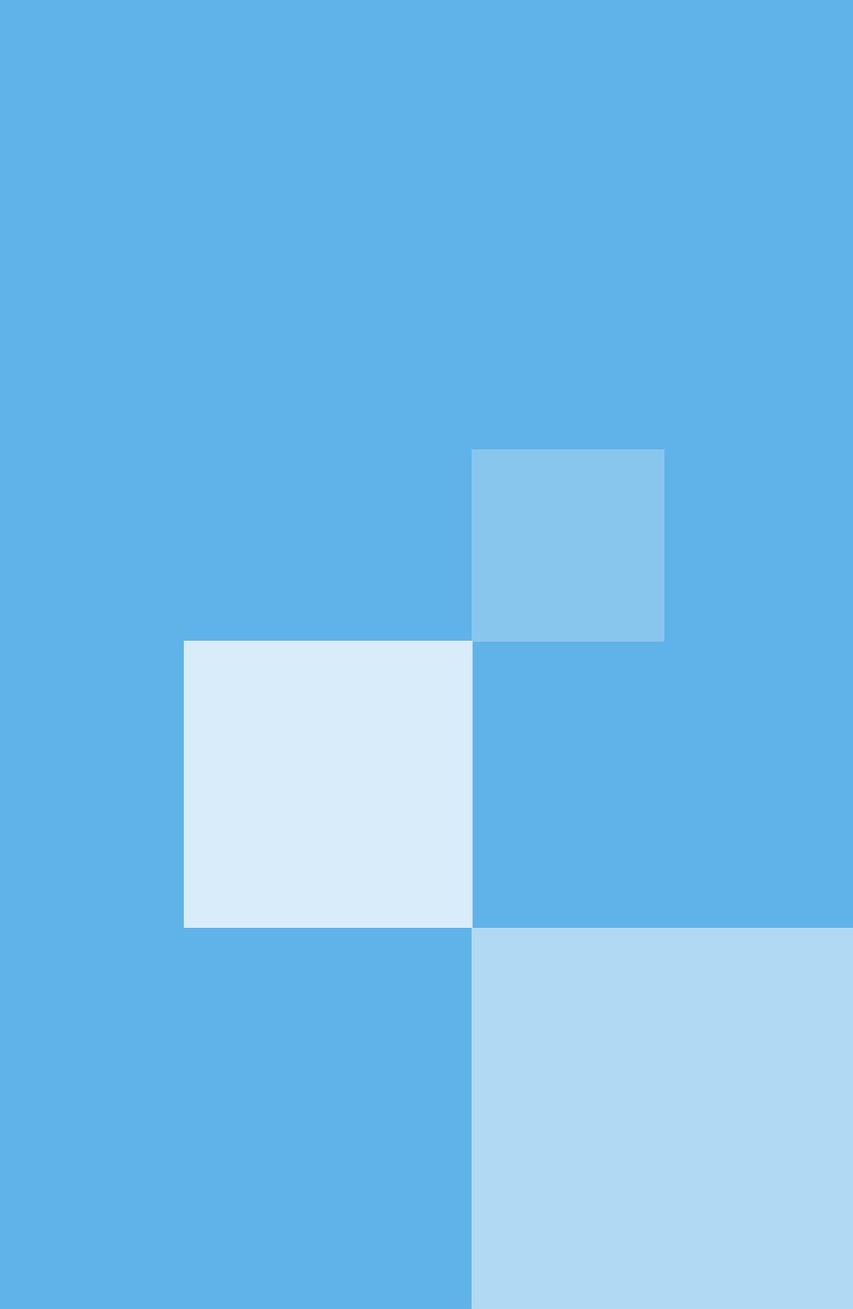
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Dutch  
Banking Sector  
Agreement



## Preamble

By means of this agreement, the Parties and the adhering banks aim to achieve a material positive impact for people (potentially) facing adverse human rights impacts (related to the activities of clients of the Dutch banking sector) and to search for solutions to address problems that an adhering bank cannot solve by itself. In the context of this agreement, Parties and adhering banks endeavour to cooperate on the basis of 'knowing and showing' because they see the added value of this approach. This joint approach is aimed at structural change.

This agreement offers each of the adhering banks the opportunity to work with the government, unions and NGOs to address specific complex problems in a structured and solution-oriented manner.

The Parties realise that for corporations, including the banking sector, acting in conformity with the OECD Guidelines and the UNGPs involves challenges, including the lack of adequate and easily available information on actual and potential human rights impacts, lack of insight in the value chains of specific high-risk sectors and on how to use or increase leverage to prevent or mitigate adverse human rights impacts. By participating in this agreement and by working together, the Parties are committed to supporting the adhering banks in the implementation of their responsibility to respect human rights and ambitiously strive to overcome such challenges.

When an adhering bank faces an impediment in the implementation of this agreement this will be the starting point for a concerted effort by Parties and the adhering bank concerned to explore what can be done to overcome this impediment and to increase the respect for human rights. This does not imply a shift of the responsibilities laid out in the OECD Guidelines and UNGPs but rather an acknowledgement of the fact that Parties and adhering banks jointly aim to contribute to the protection of and respect for human rights and wish to strengthen each other's efforts in this regard.

Parties aim for an improved level playing field regarding the protection of and respect for human rights and are prepared to liaise with their counterparts on European, OECD, UN and other international levels and networks, such as the Equator Principles Financial Institutions. They will do so to inspire other banks, governments, trade unions and CSOs worldwide to join their efforts and therefore increase the impact of this agreement.

## Parties:

### Delegation 1

**The Dutch Banking Association (Nederlandse Vereniging van Banken, NVB)**, represented by Mr C. Buijink (hereafter referred to as “the NVB”),

### Delegation 2

**The Minister of Finance**, Mr J.R.V.A. Dijsselbloem, and **the Minister for Foreign Trade and Development Cooperation**, Ms E.M.J. Ploumen (hereafter referred to as “the Government”),

### Delegation 3

**The Netherlands Trade Union Confederation, FNV**, represented by Mr C. van der Veer, and the **National Federation of Christian Trade Unions in the Netherlands, CNV**, represented by Mr M. Limmen (hereafter referred to as “the Unions”),

### Delegation 4

**Oxfam Novib**, represented by Ms F. Karimi, **PAX**, represented by Mr J. Gruiters, and **Amnesty International Nederland**, represented by Mr W.J. de Jonge (hereafter referred to as “the CSOs”).

To be jointly referred to hereafter as “the Parties”.

## Considering that:

1. By initiating this agreement, the banks operating in the Netherlands, as united in the NVB, have taken a pro-active approach, while at the same time responding to the expressed desire of both the Government and the parliament of the Netherlands to draft an agreement on international responsible business conduct for high-risk sectors, as identified in, inter alia, the Sector Risk Analysis by KPMG, in line with the advisory report on these agreements by the Social and Economic Council of the Netherlands (SER)<sup>1</sup>;
2. States have the duty under international human rights law to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. They should, according to the UN Guiding

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<sup>1</sup> SER (2014) *Advies IMVO-convenanten*, publ.no. 2014/04. International responsible business conduct is an English translation of the Dutch term ‘IMVO-convenanten’. In the case of discussions about the accuracy of the English translation or interpretation of the SER advisory report, the official Dutch text prevails.

Principles for Business and Human Rights (hereafter referred to as “the UNGPs”), clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. The Government also endorses the Council of Europe Recommendation on human rights and business of 2 March 2016, which contains guidance to States on the effective implementation of the UNGPs, including on the state duty to protect and on strengthening access to remedy for victims of business-related human rights abuse. By fostering agreements like this one, the Government gives substance to the wider governmental duty to protect human rights;

3. All Parties and banks adhering to this agreement (hereafter referred to as “adhering banks”) confirm the responsibility of corporations, including the banking sector, to respect human rights in conformity with the OECD Guidelines for Multinational Enterprises (hereafter referred to as “the OECD Guidelines”) and the UNGPs;
4. The responsibility to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work;
5. As a whole, the banking sector in the Netherlands offers a variety of financial products and services to large numbers of individual, institutional and corporate clients in virtually all industries, and may therefore find itself confronted with adverse human rights impacts;
6. The adhering banks strive to finance or invest in companies that respect human rights;
7. Parties and the adhering banks have the ambition to continuously work on the effective prevention, mitigation and, where appropriate, remediation of adverse human rights impacts;
8. The Parties will implement this agreement within an ambitious yet realistic time frame of three years;
9. Members of the NVB are invited to sign the declaration of adherence;
10. Individual banks may become “adhering banks” by signing the declaration of adherence. They do so on a voluntary basis and at their own discretion. Banks adhering subscribe to the objectives of this agreement and will implement the activities falling within the scope of its business within the agreement period;
11. The scope of this agreement concerns the corporate lending and project finance activities of banks;
12. For banks adhering to the agreement, the scope of the agreement does not restrict the relevance of other topics covered by the OECD Guidelines for

corporate lending and project finance activities of the banks, nor does it restrict the relevance and authority of the OECD Guidelines and the UNGPs for the full scope of the business activities of the banks;

13. Upon successful functioning of this agreement, the Parties intend to add an agreement on one or more other topics covered by the OECD Guidelines after the first monitoring report in 2017. In preparation for the first evaluation meeting of the Steering Committee<sup>2</sup> in 2017, the Parties will explore on which topics an additional agreement would be most effective, in line with a due diligence process as described in the SER-advisory report on agreements on international responsible business conduct. The declarations of adherence to this agreement of adhering banks will not be valid for any additional agreements. In case of additional agreements, the adhering banks will be invited to sign a new declaration of adherence;
14. In 2015, the UN adopted a set of 17 global goals as part of a new sustainable development agenda over the next 15 years. By means of this agreement, the Parties wish to contribute to the effective realisation of the Sustainable Development Goals and the Agenda 2030 so as to promote human rights, decent work and labour rights, gender equality, sustainable and inclusive economic growth, and multi-stakeholder partnerships that mobilise and share knowledge and expertise to support the achievement of the Sustainable Development Goals<sup>3</sup>;
15. The Parties and adhering banks acknowledge that it is important to enable a worldwide environment for citizens and their organisations to raise their voice on social and economic policies that affect their lives. By means of this agreement, the Parties and the adhering banks wish to contribute to such an environment;
16. To the best of their knowledge, the Parties are convinced that they concluded this agreement within the boundaries of current competition law.

## Agree to the following:

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<sup>2</sup> See paragraph 13.1 of this agreement on the functioning of the Steering Committee.

<sup>3</sup> See <https://sustainabledevelopment.un.org/?menu=1300>

# 1 Focus of the agreement: Responsibility to respect human rights (including labour rights)

1. Individual banks have the responsibility to respect human rights in conformity with the OECD Guidelines and the UNGPs.
2. Adhering banks will, to the extent that this is not yet the case, implement and embed their responsibility to respect human rights in their operations and confirm to act in conformity with the OECD Guidelines and UNGPs in the full scope of a bank's business activities for new and existing clients<sup>4</sup>, the bank's own operations and staff, including their subsidiary companies<sup>5</sup>.
3. The NVB shall promote the OECD Guidelines and the UNGPs among its members<sup>6</sup>, and all the Parties are committed to supporting the members of the NVB in applying them in a meaningful and practical manner.
4. The members of the NVB are invited to sign the declaration of adherence. By doing so, the adhering banks expect to benefit from, inter alia, the matrix/database that will provide the banks relevant information on actual and potential human rights impacts, the value chains exercises of specific high-risk sectors and the study on how to use or increase leverage to prevent or mitigate adverse human rights impacts.
5. The Parties will stimulate the members of the NVB and other banks to endorse this agreement by signing the declaration of adherence or launch similar initiatives in their countries.

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4 This does not mean that adhering banks are expected to renegotiate existing contracts. Adjustments to these contracts can be made by the adhering banks once these contracts are renewed.

5 A Subsidiary is a company controlled by another company. Control occurs when the controlling company owns more than 50 per cent of the common shares (<http://www.oecd.org/dataoecd/8/61/2376087.pdf>)

6 The members Dutch Banking Association on 14/01/2016, see <https://www.nvb.nl/vereniging/120/leden.html>

## 2 Scope of the agreement: corporate loans and project finance activities<sup>7</sup>

1. In this agreement, the Parties and the adhering banks will focus on corporate lending and project finance activities due to their global reach, the actual and potential adverse human rights impacts in this area, the material relevance, the potential of greater leverage and – within legal boundaries – the potential opportunities for action and information exchange in this area to have significant effect on the impacts<sup>8</sup>. The remainder of this agreement contains the commitments of the Parties and the adhering banks in this field of corporate loans and project finance activities.
2. The Government calls upon pension funds, insurers and other institutional investors to work together with stakeholders in assessing and addressing human rights impacts in asset management, in line with the SER advisory report and the expressed desire of both the Government and the parliament of the Netherlands for high-risk sectors to draft an agreement on international responsible business conduct. The NVB would welcome cooperation in this field and is willing to work with these investors to align policies and practices if and when relevant. Should pension funds, insurers and other institutional investors not be able to reach an agreement on asset management by the end of 2016, the Parties will take responsibility and develop an approach to address risks in the area of asset management, limited to management of in-house investment funds and assets under management of clients as part of discretionary mandates, in 2017.

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<sup>7</sup> As defined by the Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards ("Basel II"), November 2005, pp. 48-49, <http://www.bis.org/publ/bcbs118.pdf>

<sup>8</sup> Shift (2015) *Exploring the concept of prioritization: An explanatory note for the Dutch ICSR process*, see <http://shiftproject.org/project/addressing-sector-wide-risks-through-negotiated-covenants-netherlands>

### 3 Policy commitment

1. Most members of the NVB already have a public policy statement to respect human rights in which they have set out their responsibilities, commitments, and expectations in respecting human rights. To the extent that this is not yet fully the case, the adhering banks to this agreement will develop and publish, within one year of signing the declaration of adherence or by the end of 2017 (whichever is later), policy statements that include:
  - a. A commitment to respect human rights, in conformity with the OECD Guidelines and the UNGPs. This commitment should be reflected in policies and procedures, including the application of the International Finance Corporation Performance Standards (hereafter referred to as “IFC PS”) or Equator Principles in the case of project finance, necessary to embed it throughout the bank;
  - b. Information on activities that the individual bank will not finance or invest in;
  - c. A human rights due diligence procedure;
  - d. Sector and/or theme policies outlining human rights standards and parameters under which the bank conducts business in sectors that are deemed high-risk sectors according to the bank or assessed as such on the basis of the information in the matrix/database (see paragraph 5.1 of this agreement).
2. Throughout the agreement period, the adhering banks are willing to discuss further improvements to their human rights related policies with the Parties and reflect on potential actions if and when improvements are identified.
3. The NVB will encourage the adhering banks to fulfil the abovementioned expectations within one year of signing the declaration of adherence or by the end of 2017 (whichever is later), and all the Parties are committed to supporting the adhering banks in implementing them in a meaningful and practical way.
4. The adhering banks will, to the extent that is not yet the case, ensure the existence of complaints and whistle blower mechanism(s) for its own staff, including in their subsidiary companies.
5. The adhering banks will, to the extent that is not yet the case, create a complaint procedure which is publicly accessible for employees, clients and third parties, or adjust existing complaint procedure to this effect, within one year from signing the declaration of adherence<sup>9</sup>.

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<sup>9</sup> This complaint procedure is not a grievance mechanism as described under the OECD Guidelines and the UNGPs.

## 4 Human rights due diligence & client engagement

1. Most members of the NVB already undertake efforts to deploy human rights due diligence, but may still find themselves confronted with adverse human rights impacts. Adhering banks will, to the extent that this is not yet fully the case, implement human rights due diligence in their operations in conformity with the OECD Guidelines and the UNGPs within two years of signing the declaration of adherence. In doing so, they will take into account the work of the OECD Working Party on Responsible Business Conduct on due diligence in the financial sector.
2. The adhering banks understand that human rights due diligence goes beyond assessing and addressing material risks to the bank itself, and seek effective ways to introduce inclusion of assessing and addressing human rights risks to the rights holders by their clients in the banks due diligence and/or engagement procedures, prioritising high-risk sectors and regions.
3. The Parties acknowledge that the human rights due diligence procedure of a bank will vary in complexity with the size of the business enterprise of its clients, the risk of severe human rights impacts, and the nature and context of its operations. While recognising this, the Parties agree that the adhering banks to this agreement should, to the extent that this is not yet the case, within two years of signing the declaration of adherence, at a minimum include the following steps in the human rights due diligence procedure:
  - a. Identifying and assessing actual and potential human rights impacts with which they may be involved as a result of their business relationships. In this regard the adhering bank should:
    - Ascertain that the client processes involve meaningful and effective consultation by their clients with potentially affected groups and other relevant stakeholders.<sup>10</sup> The bank should address the client in case of negligence;
    - Require that clients and prospective clients provide the information needed for identifying and assessing actual and potential human rights impacts related to the client or the transaction at hand. For the client and transaction assessment procedures, inspiration can be drawn from, for example, the UN Guiding Principles Reporting Framework;

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<sup>10</sup> United Nations (2011) *Guiding Principles on business and human rights*, principle 18b: “Involve meaningful consultation with potentially affected groups and other relevant stakeholders”.

With regard to Free, Prior and Informed Consent (hereafter referred to as “FPIC”) the adhering bank will:

- Require clients in project finance to ensure that:
    - FPIC is carried out where and how the IFC PS or the Voluntary Guidelines on the Responsible Governance of Tenure (hereafter referred to as “VGGT”) require this;
    - Meaningful and effective consultations with potentially affected groups and other relevant stakeholders are carried out where and how the IFC PS or the VGGT require this.
  - Actively promote their clients in corporate loans to ensure in case of situations where there is a fair possibility of land rights violations<sup>11</sup> that FPIC is carried out where the IFC PS or the VGGT require this and will annually report to the Steering Committee on the frequency and nature of these dialogues;
  - Actively promote their clients in corporate loans to ensure in case of situations where there is a fair possibility of land rights violations<sup>12</sup> that meaningful and effective consultations with potentially affected groups and other relevant stakeholders are carried out where the IFC PS or the VGGT require this and will annually report to the Steering Committee on the efforts and results.
- b. Integrate the findings from the impact assessments across relevant internal functions and processes and take appropriate action. With respect to this step the Parties:
- Acknowledge that there might not be an ‘one-size-fits-all’ approach for how individual banks engage with their clients on preventing and addressing adverse human rights impacts;
  - Agree that the engagement process of the adhering banks to this agreement needs to be time limited and result oriented. The steps to be undertaken by the adhering banks should ideally consist of the following elements:
    - Actively promoting to act in conformity with the UNGPs among new and existing clients and promoting to act in conformity with the OECD Guidelines among new and existing clients in OECD member countries;
    - Dialogue with new and existing clients on preventing and addressing adverse human rights impacts;

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<sup>11</sup> Also to be integrated in the risk matrix/database on the basis of the joint efforts of Parties and adhering banks.

<sup>12</sup> Also to be integrated in the risk matrix/database on the basis of the joint efforts of Parties and adhering banks.

- Time-bound improvement plans with new clients and instances resulting in new improvement plans among existing clients on preventing and addressing adverse human rights impacts (unless none are identified);
  - Monitoring the time-bound improvement plans of clients;
  - Seeking ways to increase leverage;
  - Depending on individual project circumstances include clauses on respecting human rights in loan contracts;
  - If the client is repeatedly not able or willing to comply with the material due diligence requirements, the bank should, after a credible assessment of potential adverse human rights impacts of doing so, take corrective measures, and as a last resort at the discretion of the bank decide to end the relationship with the client.
  - Where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, the adhering banks to this agreement should first seek to prevent and mitigate those that are most severe or where delayed response would make them irreparable.
- c. Tracking and assessing responses.
4. The Parties are committed to supporting the adhering banks in implementing these steps in a meaningful and practical manner.
  5. The Parties will enter into a dialogue and share best practices on the practical application of effective due diligence systems with regard to the different types of corporate lending and project finance in 2017.
    - a. The adhering banks will use the outcomes as input to optimise their human rights due diligence procedure with regard to the different types of corporate lending and project finance;
    - b. The Parties will use the outcome of this dialogue as input for the discussions in the OECD Working Party on Responsible Business Conduct in the financial sector on this topic to create a level playing field within the financial sector as soon as available;
    - c. The Parties and the adhering banks will report on the progress made as detailed in paragraph 13.2 of this agreement, starting in 2018.
  6. Parties agree:
    - a. To promote the broader application of FPIC<sup>13</sup> and commit themselves to address this topic at international forums including the OECD, Equator Principles and IFC PS;

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<sup>13</sup> FPIC for legitimate tenure holders as explicated in the VGGTs (<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>) and FAO (<http://www.fao.org/docrep/005/y4307e/y4307e05.htm>).

- b. To explore in 2016 and 2017, in a joint initiative with the Land Governance Multi-Stakeholder Dialogue, if and how the broader application of FPIC can take place and based on this the Parties will provide recommendations to be used in the above mentioned international forums;
- c. The NVB will promote adhering banks to use the recommendations provided at these international forums to do their utmost to pilot the implementation of a broader application of FPIC in their policies and processes if and when practically feasible.

## 5 Tools

In order to overcome some of the challenges of implementing human rights due diligence, the Parties agree to jointly develop the tools outlined below.

### 5.1 Matrix/database

Parties will agree upon the terms of reference (TOR) for a feasible format for a publicly accessible human rights information and assessment tool ('matrix/database') and jointly commission a third party to develop the technical specifications by the end of 2016 and jointly commission the development of this tool in 2017 and start implementation upon delivery.

- a. This tool aims to:
  - Build on and enhance the existing human rights matrix/databases of public and commercial providers;
  - Provide reliable information on actual and potential human rights impacts;
  - Include the human rights themes mentioned in the OECD Guidelines, in the UNGPs, in the ILO core conventions and other relevant human rights conventions and declarations;
  - Help users identify severe human rights impacts as part of their due diligence, by providing information on scale, scope and irremediability of actual and potential impacts (as defined in the UN Guiding Principles Reporting Framework) in sector-country(/region) combinations;
  - Include a specification of conflict-affected and high-risk areas;
  - Include as a start a number of sectors which are deemed high risk according to the adhering banks, with a view to expanding the scope;
  - Serve as one of the sources of information for due diligence;
  - Serve as one of the sources for developing sector and/or theme-specific policies.
- b. Starting in 2016, the Parties commit themselves to collecting data by sharing their knowledge and published research at their discretion on the actual and potential human rights impacts for the purpose of the matrix/database and start incorporating the information in this tool in 2017.
- c. The adhering banks to this agreement will use the information from the matrix/database as a tool to identify the actual and potential human rights impacts while taking into consideration its quality and status.
- d. The Parties and the adhering banks will encourage commercial data providers on this topic to incorporate the evidence-based information from the matrix/database into their systems to facilitate practical implementation.

## 5.2 Value chain mapping exercises

Parties and adhering banks will jointly carry out value chain mapping exercises of high-risk sectors that are material to the banks and jointly commission a third party to facilitate this process by the end of 2016.

- a. Parties and the adhering banks agree that:
  - The methodology should build on the SER/Shift workshop from January 2014<sup>14</sup>;
  - Two sector-specific value chain mapping exercises will be undertaken in parallel, which amounts for each year of this agreement to a minimum of 2 and a maximum of 4 sector-specific value chain mapping exercises;
  - They will start with the analysis of the palm oil, cocoa and gold value chains. After finalising these value chains and following further specification of the oil and gas industry, the Parties intend to move on to the analysis of the oil and gas value chain. The Steering Committee will announce in the annual evaluation meeting the next value chains to be analysed;
  - The NVB will coordinate the collective effort in carrying out the sector-specific value chain mapping exercises. Which particular adhering bank to this agreement will take the lead in a sector-specific value chain mapping exercise will depend among others on the materiality and the level of specialist knowledge of the sector at that bank;
  - They will pay particular attention to the rights and needs of, as well as the challenges faced by, individuals, groups or populations that may be at heightened risk of becoming vulnerable or marginalised, including indigenous peoples, women, national or ethnic, religious and linguistic minorities, children, persons with disabilities and migrant workers and their families;
  - The Government will promote similar value chain mapping exercises in other agreements on international responsible business conduct, and will request the Parties to those agreements to make the outcomes of the mapping exercises public;
  - The outcomes of the value chain mapping will be publicly accessible;

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<sup>14</sup> Shift (2014) *Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks*. New York.

- The Steering Committee will jointly draw conclusions from the results of the value chain mapping exercises within six months of the publication of the analysis and advise adhering banks on follow-up activities. The Steering Committee will share the conclusions with Parties in other sector agreements for their mutual learning.
- b. The Parties agree to share their relevant knowledge and research or published research on actual and potential human rights impacts for the value chain mapping exercises and look for creative ways of increasing leverage to address the findings. If the necessary knowledge is not available within the Parties, the Parties will try to engage third parties with the relevant expertise.

## 6 Transparency and reporting

1. The NVB promotes the principle of maximum transparency or disclosure as expressed in the OECD Guidelines and the UNGPs and will publish sufficient detailed information on exposure to economic sectors, in accordance with the NVB Reference for Reporting on Loans.
2. All Parties commit themselves to using the information as provided on the basis of the NVB Reference for publications about the activities of banks, unless this can be explained.
3. The NVB Reference on Reporting on Loans stimulates the provision of comparable and meaningful information to stakeholders on a bank's lending portfolio. When there are requests for additional information from one or more of the Parties, the adhering banks will provide more detailed information, provided their management systems are able to respond to these requests.
4. In 2017, the adhering banks will start working towards:
  - a. Reporting in line with or equivalent to the UN Guiding Principles Reporting Framework, including the eight overarching questions of the UN Guiding Principles Reporting Framework;
  - b. Publishing detailed information on exposure to economic sectors, in accordance with the NVB Reference for Reporting on Loans, or, if they prefer to do so, a list of enterprises the bank has a credit or investment relationship with;
  - c. A published list of the bank's investment universe for asset management using individual listed shares for Dutch clients at least as of 31 December of each year, or a published list of listed companies excluded from such an investment universe on the basis of Corporate Social Responsibility criteria.
5. In addition, adhering banks will report annually to the secretariat of the Steering Committee (see paragraph 13.1.j for the procedure) on the activities falling within the scope of its business, starting with the process to provide the information in 2017 and striving for continuous improvement throughout the agreement period. This report will ultimately include:
  - a. Information on the implementation of the commitments outlined in sections 3 and 4 of this agreement, more specifically:

- Meaningful information on the proceedings and results of human rights due diligence (section 3 and 4 of the Agreement) and ultimately directed towards a practically feasible combination of qualitative and quantitative information on the basis of priorities, including:
  - The most severe human rights impacts identified. With respect to these impacts:
    - The efforts made to prevent and mitigate these adverse human rights impacts, striving to include the use and frequency of screening processes, stages of engagement, deadlines and action plans;
    - The number of companies with which there has been high-level engagement on the most severe human rights topics at headquarters completed with general information on the nature, purpose and results of these interactions;
    - Striving towards reporting on the total number of companies with which there has been interaction on human rights topics in line with GRI FS10.

The adhering banks strive to publicly disclose this information individually.

6. The annual report referred to under paragraph 6.5 of this agreement will be sent in Q1 of each year to the secretariat of the Steering Committee (see paragraph 13.1.j for the procedure).
7. If one of the Parties to the agreement would like to discuss an adverse human rights impact and risks related to a client of an adhering bank and the client relationship is publicly known, the adhering bank will enter into dialogue with this Party to discuss the concerns and the bank's perspective and potential actions.
8. Should one of the Parties to this agreement request more detailed information on individual engagement processes with respect to specific high-risk sectors and associated most severe adverse human rights impact and risks, the adhering banks will, in principle, provide more detailed information on condition that the client involved has provided consent for such sharing. The adhering banks will strive to obtain this consent from their clients.
9. Increasing transparency is a process of learning and improvement to which all Parties will contribute. Within the sphere of this agreement, the Parties will provide feedback on the disclosures of adhering banks and jointly evaluate the effects of these measures in order to continually improve reporting practice and disseminate best practices.
10. The Parties will jointly explore options for greater transparency and report on the results including:
  - a. The development of meaningful and effective performance indicators to report on business and human rights in 2016;

- b. Meaningful geographical breakdown of sector data;
- c. Discussions on how client confidentiality and mutual competition relate to the increased expectations (from society and international business and human rights standards) that enterprises show how they put their responsibility to respect human rights into practice.

## 7 Enabling remediation

1. Adhering banks confirm, in conformity with the responsibility set out in the OECD Guidelines, the UNGPs and ILO, that when enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact they should provide for or cooperate in their remediation through legitimate processes (UNGPs 22 and 29, OECD GL art. 6 of chapter IV ) and act upon the findings as described in these guidelines (see appendix 1 for the different ways in which businesses, including the financial sector, can be connected to adverse human rights impacts).
2. The Parties and adhering banks acknowledge that this recognition does not imply a shift of responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
3. The adhering banks will use their leverage to encourage clients to take their responsibility. Within two years of signing the declaration of adherence the adhering banks will implement the following:
  - a. With regard to project finance, the banks will require clients to establish or participate in a grievance mechanism through which grievances concerning the client's human rights performance can be raised by affected communities, in line with the UNGPs (Principle 31) and international standards such as the IFC PS or the Equator Principles (Principle 6);
  - b. With regard to corporate loans the banks will, in the case of severe human rights violations known to the banks, actively promote their clients to establish, participate in or enable access to a grievance mechanism in line with the UNGPs (Principle 31) and international standards such as the IFC PS or the Equator Principles (Principle 6).
4. Parties agree to:
  - a. Jointly establish by September 2016 a working group which will further explore when a bank is deemed to be 'linked to', 'contributing' or 'causing' to adverse impacts following their financing activities in specific cases and how the adverse impact in these instances could be addressed or remediated<sup>15</sup> in conformity with the OECD Guidelines and the UNGPs.

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<sup>15</sup> According to principle 25 of the UNGPs remedy may include: "Apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition."

This working group:

- Consists of experts, including a representative of the OECD secretariat of the Working Party on Responsible Business Conduct in the financial sector and representatives of the Parties;
  - Will analyse all potential Principles, Guidelines and/or other publications on this topic deemed relevant by one or more Parties or working group members<sup>16</sup>;
  - Reports on the findings to the Steering Committee by April 2017.
- b. Suggest cases of adverse human rights impacts to be discussed and assessed by the working group;
  - c. Contact the OECD with the aim of receiving further and practical guidance of the OECD Guidelines in this regard by the end of 2016;
  - d. Advise the adhering banks by the end of 2017 on the appropriate steps to take to integrate the findings of the working group, taking into account the effectiveness criteria of Principle 31 of the UNGPs.
5. The Parties will provide the outcomes of the working group as input for the discussions in the OECD Advisory Group on Responsible Business Conduct in the financial sector in order to create a level playing field within the financial sector. If, in the meantime, the OECD Working Group on Responsible Business Conduct has already reached an outcome on this topic, the working group will use the findings of the OECD Advisory Group to assess the practical implications.
  6. In parallel with the establishment of a working group, the NVB will establish an independent voluntary advisory expert mechanism in 2017 where selected notifications of an alleged breach of the OECD Guidelines, including the chapter on human rights based on the UNGPs, following project finance in first instance can be discussed on the basis of substantiated information and calls upon adhering banks to use this mechanism when relevant.
  7. The lessons learnt by existing similar mechanisms and experts active in this field will serve as input when designing the independent expert mechanism.
  8. The NVB will use the outcomes of the working group under paragraph 7.4 of this agreement as input for the design and/or to further improve the functioning of the independent expert mechanism by the end of 2017.
  9. The independent expert mechanism should be trustworthy to all Parties. When establishing this mechanism, the NVB will therefore invite trade unions, CSOs

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<sup>16</sup> For the purpose of interpreting 'remediation': the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law will be one of the sources used (adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005).

and the Government to suggest independent expert candidates for this mechanism. This mechanism will be chaired by an independent chairperson.

10. The members of this mechanism will operate in an independent and impartial manner.
11. This mechanism does not replace the OECD NCP or any other complaints mechanism but advises the relevant financial institution for eligible complaints how it can best handle actual selected cases of adverse impact brought to their attention by the financial institutions or by legitimate rights seekers.
12. The mechanism will not compromise the role of the OECD NCP to contribute to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances. When an issue brought before the OECD NCP involves an adhering bank, the adhering bank will cooperate to the fullest extent in NCP specific instance procedures and will also stimulate their clients to do so.

## 8 Specific Themes

The Parties have a shared ambition to bring about respect for human rights, especially regarding severe risks, including labour rights consisting at least of freedom of association, collective bargaining and a living wage. The Parties will collectively strive to make a difference in the next three years in this regard in the sectors chosen for value chain mapping exercises.

## 9 Increasing leverage

1. The SER advisory report on responsible business conduct states:

*Agreements on international responsible business conduct offer companies the opportunity to work jointly at the sector level in conjunction with the government and other parties to address specific complex problems in a structured and solution-oriented manner and thus to increase their leverage.*

Therefore, the Parties and the adhering banks agree to work together and commit themselves to conducting and publishing a study on good practices of how to increase leverage when supporting companies to improve responsible business conduct regarding human rights for the different types of financial services, including corporate lending and project finance by the end of 2017. This study will include different categories of (creative ways to increase) leverage, such as:

- a. Analysing public and silent engagement processes in order to assess the effectiveness of both approaches;
  - b. Providing relevant knowledge, networks and best practices;
  - c. Traditional commercial leverage;
  - d. Leverage together with business peers;
  - e. Leverage through bilateral engagement with one or more third parties;
  - f. Leverage through multi-stakeholder collaboration<sup>17</sup>.
2. The adhering banks will use the outcomes of this study as input for their continuous constructive efforts to increase their leverage when engaging with clients when, for example, the adhering banks address the findings of the value chain mapping exercises.
  3. The Parties will support the banks adhering to this agreement in increasing their leverage, including sharing the necessary knowledge and contacts, when the adhering bank encounters challenges in the client engagement and vice versa, where relevant and achievable, the adhering bank will support the Parties when they need to find ways to increase their leverage to improve the responsible business conduct of companies.

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<sup>17</sup> Shift (2013) *Using Leverage in Business Relationships to Reduce Human Rights Risks*. New York.

## 10 **Beyond due diligence: promoting sustainable development**

The Parties and the adhering banks to this agreement are motivated to go beyond acting or supporting actions in conformity with the OECD Guidelines and the UNGPs ('do no harm') to include promoting human rights by promoting sustainable development ('do good'). The Parties and the adhering banks to this agreement agree to continue to investigate possibilities in this regard taking into consideration the salient issues stemming from the matrix and/or other sources and can report on the progress made in this regard in the annual monitoring report.

# 11 The role of the Government

1. The realisation of (respect for) human rights is part of the state's duty to protect human rights. The Parties acknowledge that the Government plays and can play an important part in implementing this agreement. By signing this agreement, the Government, in addition to the commitments made throughout the agreement, makes the following sector-specific commitments:
  - a. When information on actual and potential human rights impacts within the local context is needed, for example for the matrix/database and/or the value chain mapping exercises, the Government through, inter alia, the embassies will assist the Parties and the adhering banks to this agreement by providing this information;
  - b. When support is needed to increase leverage, the Government will, where necessary and possible, through, inter alia, the embassies, support the Parties and the adhering banks to this agreement, by actively approaching and/or facilitating the engagement between the local authority in the host country, banks, clients and other stakeholders;
  - c. In order to assist the Parties and the adhering banks in implementing this agreement, the Government will focus its diplomacy on human rights as part of its economic relations;
  - d. Urging upon the members of the NVB to adhere to this agreement;
  - e. Making clear to enterprises the way in which competition policy affects mutual agreements in the area of international responsible business conduct. This will be put into effect in the amended Policy Rule on Competition and Sustainability;
  - f. Putting the issue of competition law in relation to sustainability on the European agenda through the available forums;
  - g. Taking the results of this agreement to EU and OECD levels to create a level playing field internationally and focus attention on this example of self-regulation;
  - h. Incentivizing responsible business conduct in general through, *inter alia*, public procurement and trade missions;
  - i. Contributing to a level playing field by encouraging other EU member States and OECD member States to stimulate their banks to act in conformity with the OECD guidelines and the UNGPs;
  - j. Contributing to a level playing field by encouraging other EU Member States and OECD Member States to stimulate their banks to become member of the Equator Principles while the members of the Equator Principles continue to improve the principles as a standard;

- k. With regard to Export Credit Agencies:
  - Encouraging protection and respect for human rights, particularly in situations where the potential impacts from projects or existing operations pose risks to human rights;
  - Observing its duty to protect as mentioned in UNGPs, particularly principles 3 & 4;
  - Committing that the Dutch Export Credit Agency (Atradius DSB) continues to apply the OECD Common Approaches<sup>18</sup> for environmental & social due diligence in the framework of export credits, including the application of the IFC Performance Standards for these due diligence processes;
  - Endorsing the UNGPs and continuing to implement its principles in the business processes;
  - Supporting further cooperation between Atradius DSB and the adhering banks in client and project due diligence processes where both Atradius DSB and an adhering bank are involved.
- l. Consulting internally on the implementation of the Council of Europe Recommendation on human rights and business of 2 March 2016;
- m. Actively promoting an enabling environment for citizens and their organizations to raise their voice on social and economic policies that affect their lives;
- n. When (financial) regulation proves to be an obstacle for the fulfillment of the OECD Guidelines and the UNGPs, the government will look into said obstacle and work towards a solution, including possible solutions at international level.

The Government will, alongside the sector-specific commitments made by the Government in this agreement, continue to fulfil its duty to protect in accordance with international human rights law, the UNGPs, the Dutch National Action Plan on business and Human Rights and the Council of Europe Recommendation on human rights and business of 2 March 2016<sup>19</sup>, as well as the commitment to promote human rights internationally as reflected in the policy briefs ‘Respect and Justice for All’ and ‘CSR Pays Off’.

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<sup>18</sup> As further detailed in the recommendation of the Common Approaches, as adopted by the OECD Council on Wednesday 6 April 2016.

<sup>19</sup> Recommendation of the Committee of Ministers to member states on human rights and business adopted on 2 March 2016, [https://wcd.coe.int/ViewDoc.jsp?p=5&Ref=CM/Rec\(2016\)3&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FD864&BackColorLogged=FD864&direct=true#RelatedDocuments](https://wcd.coe.int/ViewDoc.jsp?p=5&Ref=CM/Rec(2016)3&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FD864&BackColorLogged=FD864&direct=true#RelatedDocuments)

## 12 The role of the Unions and the CSOs

The role of the Unions and the CSOs is diverse. For the effective implementation of the OECD Guidelines and the UNGPs, stakeholder engagement is considered essential. In this respect, the Parties, adhering banks and society at large regard the Unions and CSOs as important stakeholders regarding human rights, including labour rights. The Parties acknowledge that the Unions and CSOs play and can play an important part in implementing this agreement. The Unions and CSOs involved are prepared to play both an independent critical role as well as a constructive role in implementing this agreement.

Unions (i.e. UNI) and CSOs commit, inter alia, to contribute to:

- The development and implementation of the matrix/database;
- The value chain mapping exercises;
- The study on increasing leverage;
- The working group on remediation and;
- The governance of this agreement.

In addition to this, Unions (i.e. UNI) and CSOs will, when it relates to their field of expertise, to the best of their ability and knowledge, substantially contribute by:

- a. Sharing with Parties and the adhering banks existing and tailor made expertise, for instance:
  - Empowering ways of interaction with local stakeholders;
  - Civil society building in fragile contexts;
  - Risk assessments with human rights focus;
  - Ways to overcome obstacles to the fulfillment of human rights, including violations of labour rights, in repressive contexts;
  - Interaction with governments in fragile, conflict-affected or quasi-ungoverned areas;
  - Interaction with governments of states where serious human rights violations frequently take place;
  - Human rights risks of company-government (security) agreements;
  - Protection of human rights defenders;
  - Local evidence gathering.
- b. Providing the Parties and the adhering banks with information and/or perspectives that the Unions and CSOs have easier or better access to (in addition to the role the Government will play in this respect). This information and/or perspectives may include:

- Information on actual and potential human rights impacts, including a clear indication of the status of this information;
  - Information on specific cases and possible useful (signals from) networks and partners;
  - Identifying emerging issues that might entail risks of human rights violations;
  - Background information and analysis about the identified risks and impacts;
  - Information, expertise, perspectives and/or advice related to general human rights due diligence policies and procedures;
  - Information, expertise, perspectives and/or advice related to selected concrete gaps in human rights due diligence;
  - Information from peers and partners that the adhering banks do not have.
- c. Contributing to the prioritization of risks based on the knowledge of (upcoming) international standards and their global and international overview, perspective and network;
- d. Interacting with the Parties and the adhering banks on timely selected specific themes in order to enhance mutual learning with a view to improving human rights situation of affected communities;
- e. Contributing to the improvement of the space for civil society worldwide by supporting and when necessary empowering the counterparts of the Unions and the CSOs abroad to hold their own government and companies/investors involved to account, amongst others as part of the participation of the Unions and the CSOs in the ‘dialogue and dissent’ programme of the Dutch government;
- f. Providing suggestions for possible solutions that the Parties and/or adhering banks face, by:
- Suggesting useful networks and partners;
  - Suggesting result-oriented changes to policies and practices;
  - Giving input on human rights risks in relation to sectors and themes that are relevant to the adhering banks;
  - Taking the role of informal sounding board on sensitive and/or complex issues.

# 13 Governance

## 13.1 Steering Committee

- a. The implementation of the agreement is governed by a Steering Committee.
- b. The Steering Committee will decide upon and design its own working method.
- c. Each delegation to the agreement appoints two (2) members, one representative and one deputy representative, to the Steering Committee.
- d. The Steering Committee is chaired by an independent chairperson, jointly appointed by all Parties.
- e. The Steering Committee takes decisions unanimously.
- f. Each Party has the right to ask for a decision of the Steering Committee in respect of matters in connection to this agreement.
- g. Where relevant, the Steering Committee will invite adhering banks to this agreement to attend the meeting of the Steering Committee.
- h. The Steering Committee is responsible for dealing with day-to-day governance issues for the implementation of the agreement. It is responsible for, inter alia:
  - New projects, initiatives or cooperation with other entities that support or reinforce the implementation of the agreement;
  - Safeguarding a balanced contribution by the Parties to the activities and the results;
  - Convening an annual evaluation meeting to inform the Parties of the steps taken to implement the commitments in this agreement and, where needed, to provide the Parties and the adhering banks with recommendations for improvement;
  - Developing and maintaining an implementation plan<sup>20</sup>.
- i. The Parties will ask a third party to host an independent secretariat to assist the Steering Committee.
- j. The annual information provided by the Parties and the adhering banks for assessing the individual progress made in implementing this agreement will be sent in Q1 of each year to the secretariat of the Steering Committee. Reasons for non-disclosure need to be explained. The secretariat will provide the information to the independent Monitoring Committee<sup>21</sup> for the annual monitoring report. The independent Monitoring Committee will, through the secretariat, provide the annual monitoring report to the Steering Committee.

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<sup>20</sup> This living document will be available upon request.

<sup>21</sup> See paragraph 13.2 of this agreement on the functioning of the Steering Committee.

Competitively sensitive information provided by individual banks will not be shared with any representative of any other bank.

- k. The secretariat of the Steering Committee will treat the competitively sensitive information received from the Parties and the adhering banks as strictly confidential. The Steering Committee will not receive this competitively sensitive information. In this regard, the Steering Committee will develop a confidentiality protocol that will safeguard this notion during the agreement period. This protocol will apply to the Steering Committee and the secretariat that assists the Steering Committee.

## 13.2 Monitoring

- a. An independent Monitoring Committee will monitor the quality and quantity of the input and the progress made by the Parties and the adhering banks in carrying out the activities as agreed upon, based on the principles of reasonableness and fairness (*redelijkheid en billijkheid*) and will report on a confidential basis to the Steering Committee on its findings. The Steering Committee will draft and publish a summary of the analysis and the advice of the independent Monitoring Committee as part of its annual progress report. The first annual monitoring report will be provided in Q3 of 2017. After the first year, the annual monitoring report will be provided in Q2 of each year. The annual monitoring report will not contain competitively sensitive information on individual adhering banks.
- b. The Steering Committee will use this annual progress report and the full monitoring report of the independent Monitoring Committee to inform the Parties during the annual evaluation meeting of the steps taken to implement the commitments in this agreement and, where needed, will provide the Parties and the adhering banks with recommendations for improvement. The first overview with possible recommendations will be provided in Q3 of 2017. After the first year, the overview with possible recommendations will be provided in Q2 of each year. The Parties and the adhering banks will follow up on these recommendations.
- c. The Parties and the adhering banks, via the secretariat, will provide the independent Monitoring Committee with all information needed for assessing the individual progress by Parties and adhering banks made in implementing this agreement. If the independent Monitoring Committee considers it necessary, it may ask the Parties and the adhering banks questions about the information provided. If the Monitoring Committee considers it necessary to verify the provided information, it may ask the internal audit

departments of the adhering banks and as a last resort an external accountant to verify the information provided.

- d. Parties may decide to publish interim results. The text will be agreed upon beforehand by the Steering Committee.
- e. The independent Monitoring Committee will provide the Steering Committee with a final monitoring report on the overall progress made on the implementation of this agreement in Q2 of 2019. This report will be based on the information provided and the progress made by the Parties and the adhering banks until Q1 of 2019. The Steering Committee will publish this report accompanied by a statement. This report will provide the basis for discussion between the Parties and the adhering banks on the achievements, possible obstacles for implementation, solutions and the contribution made by this agreement for people (potentially) facing adverse human rights impacts on the ground.
- f. By the end of 2016, the members of the independent Monitoring Committee will be appointed by the Minister of Finance and the Minister for Foreign Trade and Development upon a binding nomination by the Steering Committee.

### 13.3 Dispute resolution

- a. If a dispute arises between a Party and another Party with respect to the fulfilment of the commitments laid down in this agreement, the Parties to such a dispute and, where relevant, the adhering bank(s) involved (hereafter “the disputing parties”) will primarily try to solve their dispute bilaterally.
- b. If they cannot reach an agreement, the Steering Committee will deal with the issue, after it has been informed in writing about the dispute.
- c. If the dispute concerns a non-delivery by an adhering bank, the Party that brings up this issue will, at the shortest possible notice, inform the adhering bank, the NVB and the Steering Committee about the dispute.
- d. The Steering Committee invites the disputing parties to the meetings dealing with the dispute to inform the Steering Committee about their positions. Disputing parties will be part of the dispute mechanism but will have no vote in the final unanimous decision about the dispute by the Steering Committee. The Steering Committee should be able to make its assessment freely and may convene a meeting without the disputing parties to do so.
- e. The disputing parties provide the necessary information to the Steering Committee for a proper assessment of the dispute without delay but at least within three weeks after the Steering Committee started dealing with the dispute. If one of the disputing parties is not able to provide the necessary

information within this period, the disputing party may request the Steering Committee for postponement. The Steering Committee will decide what the appropriate term for postponement is.

- f. From the time the Steering Committee is informed about the dispute, the Parties will not reveal any factual information received from the disputing parties that supports their point of view in the dispute that is being dealt with to any third parties except clients involved and regulators, but will be free to communicate that the Steering Committee is dealing with a dispute and to communicate in generic terms the issues underlying the dispute.
- g. Within three weeks after receiving the necessary information, the Steering Committee will initiate a dialogue with the disputing parties and can opt to invite Parties and third parties to participate in this dialogue.
- h. The Steering Committee should do its utmost to try and reach an unanimous decision. If it cannot reach an unanimous decision, any member of the Steering Committee can call in one or more experts, agreed upon by the disputing parties. The expert or experts will provide the Steering Committee with an authoritative advice for the resolution of the issue in question.
- i. As a result of this dialogue, which should be completed within three months, the Steering Committee will advise the disputing parties and recommend time-bound follow-up steps. The disputing parties will in principle have six months to follow up (*opvolging geven aan*) on this recommendation.
- j. Within three weeks after this period, the Steering Committee will take a final unanimous decision about the dispute.
- k. The Steering Committee will communicate its decision to the disputing parties.
- l. The decision of the Steering Committee is binding upon the disputing parties, however it is not enforceable in law.
- m. The decision and the communication of the Steering Committee will include:
  - A statement of the findings and conclusions of the Steering Committee on the dispute, as well as the reasons or bases for these findings and conclusions;
  - If applicable, a substantiated call to end the non-fulfilment by a Party of the commitments laid down in this agreement and/or a substantiated call to end the non-fulfilment by an adhering bank;
  - When applicable the reasonable period of time to end the non-fulfilment, depending on the severity of the non-fulfilment, but in principle within six months.
- n. The decision of the Steering Committee, together with the advice of the experts if provided, will be made public unless the Steering Committee decides to withhold certain information if a pressing interest so requires.

- o. The disputing parties will, within the given period of time, follow up (*opvolging geven aan*) on the decision of the Steering Committee.
- p. Should the Steering Committee not be able to reach an ultimate unanimous decision within three weeks after the in principle six months (one of) the disputing parties have to follow up (*opvolging geven aan*) on the recommendation of the Steering Committee, the Steering Committee is responsible for publicly communicating:
  - That it was not able to reach a decision;
  - The positions of the disputing parties;
  - The procedure that has been followed;
  - The advice of the expert(s);
  - A statement of each of the disputing parties.
- q. If a decision of the Steering Committee is not followed up (*opvolging geven aan*) by a disputing party within the given period, the Steering Committee will hold a pressing meeting with this disputing party, and as a last resort may expel the disputing party from this agreement.
- r. The Steering Committee will make a public statement when a disputing party is expelled.
- s. Any dispute, as referred to in section 13.3.a., that arises during the agreement period, will be dealt with according the time bound procedure as set out in this paragraph, even if this exceeds the duration of the agreement;
- t. The dispute resolution as described in this paragraph will not interfere with the role of the OECD NCP to contribute to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances.

## 13.4 Funding

- a. The funding of this agreement is based on a budget which is agreed upon by the Parties.
- b. The Parties stress the importance of generating open sources data for both the matrix/database as the value chain mapping exercises. The Parties (and in particular the Dutch Government) will seek partners at EU and OECD levels and amongst the multilateral institutions for support and structural finance of both initiatives. Parties will strive to make the information gathered continuously available to all financial institutions for which this is deemed relevant in a way that maximizes the likelihood of its optimal use in their day-to-day work.

## 14 Final provisions

1. This agreement will enter into force after the Parties have signed it and on the date it is published in the Dutch Government Gazette (*Staatscourant*).
2. This agreement has a duration of three years from the date of publication.
3. All Parties and all adhering banks will make known to their staff and management and to external parties that this agreement has been concluded and that it subscribes to its objectives and will perform the activities falling within the scope of its business.
4. All Parties and adhering banks may terminate their commitment to this agreement, stating the reason or reasons for termination and giving three months' notice to the Steering Committee. The Steering Committee will make the termination public.
5. When a Party or a bank adhering to this agreement terminates its commitments to this agreement, all of its commitments in this agreement and/or in the letter of adherence will cease to apply as of the date of termination.
6. When a Party or a bank adhering to this Agreement terminates its commitment, the Agreement shall remain in full force and have full effect for the other Parties.
7. Assuming a successful implementation of this agreement, the Parties intend to renew this agreement for another period. In the case of a renewal the results of the final monitoring report will be used as input (see paragraph 13.2.e).
8. In all contexts, parties and adhering banks should: a) comply with all applicable laws and respect internationally recognized human rights, wherever they operate; b) seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements.

With this agreement, Parties and adhering banks give substance to the UNGPs. In the implementation of this agreement, the Parties and the adhering banks may face conflicts with legal requirements, or – in case of disclosure – with internal policies and decisions. All commitments of the Parties and the adhering banks under this agreement, including but not limited to those in sections 4.3, 5.2.a, 5.2.b, 6.1, 6.3, 6.5, 6.8, 13.1.j, 13.1.k, 13.2.c, 13.3.e, 13.3.n, 13.4.b, are subject to the following:

- a. The Parties and the adhering banks acknowledge their obligations under national and international laws and regulations, including national and international competition laws and regulations, and will act in accordance therewith. As such, all commitments of the Parties and the adhering banks

- are restricted by applicable laws and regulations, regulatory provisions, governmental orders and stock exchange requirements and – in case of disclosure – client confidentiality and internal policies. By entering into this agreement, the Parties and the adhering banks to this agreement are not attempting to restrict the market or reduce competition;
- b. In cases where Parties or adhering banks perceive that legal impediments render it impossible to implement the agreement fully, they will explain why. If so, they are expected to respect the provisions of the agreement to the greatest extent possible in the circumstances, and to be able to demonstrate to the Steering Committee their efforts in this regard;
  - c. In implementing this agreement the Parties and adhering banks operate on the principle of maximum transparency. If internal policies and decisions concerning disclosure prevent Parties and/or adhering banks from disclosing the required information they will explain why.
9. By decision of the Steering Committee, this agreement may be amended to include new projects and initiatives.
  10. In case of amendment of this Agreement, the adhering banks will be invited to sign additionally for the amendments in this Agreement. If they choose to do so, the amendments will be added as an addendum to their declaration of adherence. If they choose not to do so, their adherence to the original agreement remains valid.
  11. The Parties agree that this agreement is not an enforceable agreement in law and that disputes about the implementation of this agreement may be submitted in accordance with paragraph 13.3 of this agreement.
  12. The agreement is open to the admission of other Parties. Individual banks can endorse this agreement and the activities relevant to its business by signing the declaration of adherence. Other organisations may become a Party and join one of the delegations in the Steering Committee by signing this agreement. The Steering Committee decides on the admission of new Parties.
  13. All information that parties confidentially shared during the agreement and in relation to the implementation of the agreement will stay confidential after the duration of the agreement.

## Thus agreed and signed 28 October 2016 in The Hague

Chris Buijink  
*Nederlandse Vereniging van Banken (NVB)*

Jeroen Dijsselbloem  
*Ministry of Finance (Ministerie van Financiën)*

Lilianne Ploumen  
*Ministry of Foreign Affairs (Ministerie van Buitenlandse Zaken)*

Maurice Limmen  
*Christelijk Nationaal Vakverbond in Nederland (CNV)*

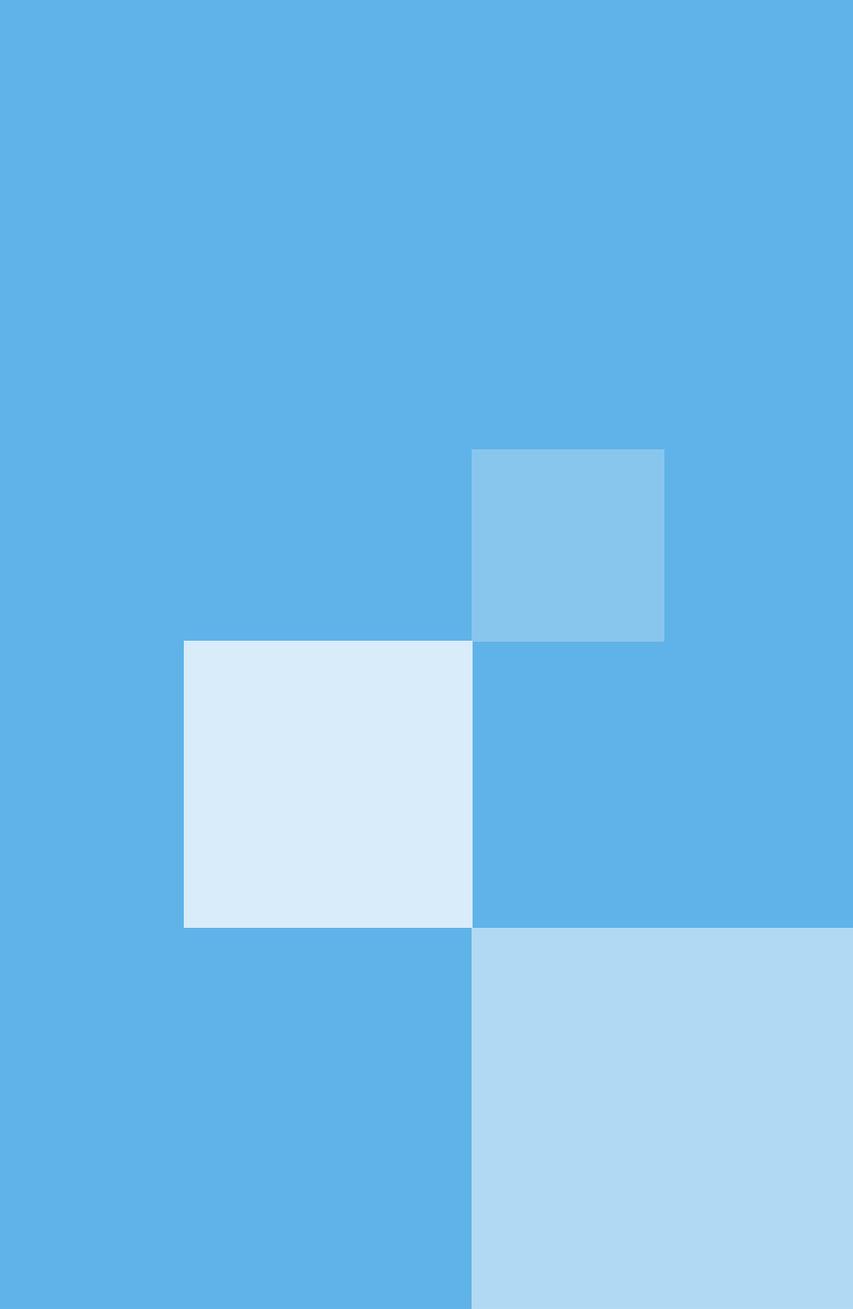
Coen van der Veer  
*Federatie Nederlandse Vakbeweging (FNV)*

Farah Karimi  
*Stichting Oxfam Novib*

Jan Gruiters  
*Stichting Vredesbeweging PAX Nederland*

Wilco de Jonge  
*Amnesty International, Afdeling Nederland*



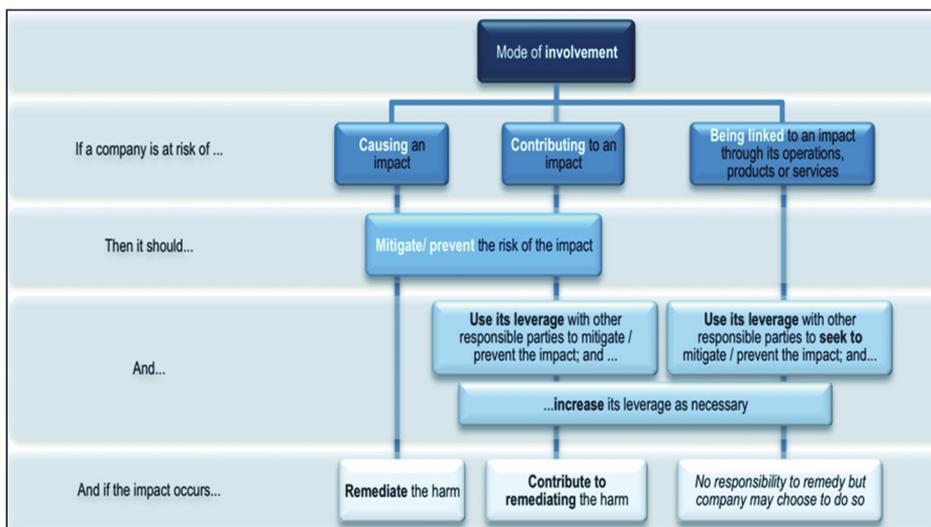


## Appendix

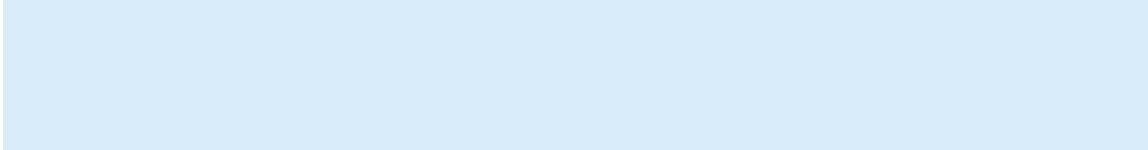


## Responsibility scenarios

UN Guiding Principles on Business and Human Rights on the different ways businesses, including the financial sector, can be connected to adverse human rights impact.



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## Composition of the working group

The dialogue was conducted by a industry association, individual banks, trade unions, CSOs and the Government. The Social and Economic Council of the Netherlands (Sociaal-Economische Raad, hereafter “the SER”) has facilitated the process. The independent chair was Jacqueline Cramer.

In preparing the agreement, various stakeholders have been spoken to: Banktrack, VBDO, WO=MEN, Platform for Inclusive Finance, Rijksdienst voor ondernemend Nederland, DNB, MVO Platform, SOMO, NCP, OECD, Save the Children, Profundo, Transparency International, The Netherlands Institute for Human Rights, Sustainable finance lab, de groene zaak, The Dutch Association of Insurers, VNO-NCW, consultants and academics.

### *Members of the working group*

### *Substitute members*

#### **Chair**

Jacqueline Cramer

#### **Industry Association**

Bas Rüter (NVB Platform Duurzaamheid)  
Sharon van Ede (NVB)

Arnaud Cohen Stuart  
Floris Mreijen

#### **Individual Banks**

José den Toom (Rabobank)  
Arnaud Cohen Stuart (ING)  
Richard Kooloos (ABN AMRO)  
Marleen van Ruijven (FMO)

Olaf Brugman  
Floske Kusse  
Maria Anne van Dijk

#### **Trade Unions**

Fred Polhout (FNV)  
Marjolein Groenewegen (CNV)

Lucia van Westerlaak  
Bernard Jan de Groot

#### **CSOs**

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